TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~972~~. 881

CHARLES L. BORGMEYER, ADMINISTRATOR OF THE ESTATE OF ALEXANDER CHATAING, DECEASED, PLAINTIFF IN ERROR,

vs.

WILLIAM IDLER AND JOHN W. HAZELTINE, ADMINISTRATORS DE BONIS NON OF THE ESTATE OF JACOB IDLER, DECEASED.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

FILED APRIL 4, 1895.

(15,856.)

(15,856.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 972.

CHARLES L. BORGMEYER, ADMINISTRATOR OF THE ESTATE OF ALEXANDER CHATAING, DECEASED, PLAINTIFF IN ERROR,

vs.

WILLIAM IDLER AND JOHN W. HAZELTINE, ADMINISTRATORS DE BONIS NON OF THE ESTATE OF JACOB IDLER, DECEASED.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

INDEX.

	Original.	Print.
Caption	1	1
Transcript from United States circuit court, eastern district of Pennsylvania	3	1
Writ of error	3	1
Citation, with return of service	3	2
Caption	4	3
Summons and return	5	3
Statement of plaintiff's claim	6	4
Affidavit of defense	11	9
Plea	14	12
Jury	15	13
Verdict	15	13
Motion and reasons for a new trial	15	13

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 22, 1895.

	Original.	Print.
Motion for judgment *non obstante veredicto*	17	15
Argued on motion for new trial and for judgment *non obstante veredicto*	18	16
Opinion	18	17
Remittitur	36	35
Motion for judgment	36	35
Judgment	36	35
Bill of exceptions	37	35
Plaintiff's proffers	37	36
Defendants' proffers	39	37
Testimony of William Idler	39	38
Plaintiff's rebuttal evidence	51	49
Judge's charge	51	50
Assignments of error	54	53
Bond surwrit of error	57	55
Clerk's certificate	58	56
Petition of William Idler and John H. Haseltine against United States of Venezuela	59	57
Exhibit No. 1—Brigadier General Lino de Clemente's commission, etc	91	75
No. 2—Instructions to the commissioners	93	76
No. 3—Certificate of General Lino de Clemente	94	77
No. 4*a*—Certificate of General Lino de Clemente	95	78
No. 5—Decree of Intendente Mendoza and Asesor Castillo	96	78
No. 6—Decree of Intendente General Briceno and Asesor Duarte	96	79
No. 7—Appointment of G. B. Sprotto as referee	97	79
No. 8—The treasurer's assent to the appointment of a referee	97	80
No. 19—Decision of the treasury court of Caracas approving Señor Cadenas' award	98	80
No. 20—Decision of the superior court affirming decision of the treasury court of September 18, 1832	99	81
No. 21—Opinion of the attorney general, etc	100	81
No. 22—Decision of the supreme court of justice overruling the plea, etc	102	83
No. 23—Reorganization *ad hoc* of the supreme court	104	84
No. 24—Petition of Señor Aranda, etc	105	85
No. 25—Letter of Señor Paul, etc	109	87
No. 26—Decree of supreme court remanding the case, etc	110	88
No. 27—Decision of supreme court of Venezuela affirming the allowance, etc	112	90
The United States and Venezuela convention	119	94
Convention to remove doubts, etc	131	102
Supplementary convention, etc	135	104
Convention between the United States and the Republic of Venezuela, proclaimed May 29, 1867	139	106
Record of proceedings of the United States and Venezuela commission	144	109
Letter to Jacob Idler, Esq., of November 20, 1833	184	149

	Original.	Print.
Letter to Mr. Jacob Idler, of June 6, 1834	185	150
Mr. Jacob Idler, of September 1, 1836	186	151
Jacob Idler, Esq., of July 17, 1836	186	151
Mr. Ja cob Idler, of November 11, 1835	187	152
Mr. Jacob Idler, of May 20, 1834	188	152
Jacob Idler, Esq., 7th January, 1834	188	153
Alexandro Chateng, September 24, 1831	189	153
Jacob Idler, April 20, 1836	190	154
Alexander Chataing and Dr. Ignacio Dias, May 24, 1836	191	155
Alexander Chataing, May 24, 1836	192	156
Alexander Chataing and Dr. Ignacio Dias, June 17, 1836	192	156
Alexander Chataing, August 20, 1836	194	158
Alexander Chataing, August 20, 1836	195	159
Senora Chataing, October 3, 1833	196	159
A. La Sora Manuela, Deciem 1°, 1836	196	160
J. G. A. Williamson, Esq., 5th January, 1837	197	160
Hon. J. G. A. Williamson, 7 October, 1826	198	161
Award of the commissioners, July 14, 1890	199	163
Clerk's certificate to exhibits	201	164
Argued	202	164
Opinion of the court	202	164
Order reversing judgment of circuit court	221	176
Assignments of error	223	176
Writ of error	230	180
Citation, with return of service	231	180
Bond surwrit of error	233	181
Clerk's certificate	235	182

1 United States Circuit Court of Appeals for the Third Circuit.

WILLIAM IDLER and JOHN W. HAZELTINE, Citizens of the State of Pennsylvania, Administrators *de bonis non* of the Estate of Jacob Idler, Deceased, Defendant- Below, Plaintiffs in Error,

vs.

CHARLES BORGMEYER, a Citizen of the State of New Jersey, Administrator of the Estate of Alexander Chataing, Deceased, Plaintiff Below, Defendant in Error.

Be it remembered that on the twelfth day of May, in the year of our Lord one thousand eight hundred and ninety-four (1894), M. Hampton Todd, Esqr., and Edward H. Weil, Esqr., attorneys for plaintiffs in
7 error, appeared in court and files a transcript of record, pursuant to a writ of error, in the case of William Idler and John W.
2 Hazeltine, citizens of the State of Pennsylvania, administrators *de bonis non* of the estate of Jacob Idler, deceased, defendants below, plaintiffs in error, *vs.* Charles L. Borgmeyer, a citizen of the State of New Jersey, administrator of the estate of Alexander Chataing, deceased, plaintiff below, defendant in error, which, being read, is in the words and figures following, to wit:

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Charles L. Borgmeyer, a citizen of the State of New Jersey, administrator of the estate of Alexander Chataing, deceased, *vs.* William Idler and John W. Hazeltine, citizens of the State of Pennsylvania, administrators *de bonis non* of the estate of Jacob Idler, deceased, a manifest error hath happened, to the great damage of the said William Idler and John W. Hazeltine, citizens of the State of Pennsylvania, administrators *de bonis non* of the estate of Jacob Idler, deceased, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the third circuit, together with this writ, so that you have the same at the city of Philadelphia within thirty days, in the said United States circuit court of appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said circuit court of appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, the fourteenth day of March, in the year of our Lord one thousand eight hundred and ninety-four.

SAMUEL BELL,
Clerk of the Circuit Court of the United States, Eastern District of Pennsylvania.

[SEAL.]

Allowed by—
M. W. ACHESON, *Cir. J.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Charles L. Borgmeyer, a citizen of the State of New Jersey, administrator of the estate of Alexander Chataing, deceased, Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the third circuit, to be holden at the city of Philadelphia, within thirty days, pursuant to a writ of error, filed in the clerk's office of the circuit court
4 of the United States in and for the eastern district of Pennsylvania, in the third circuit, wherein William Idler and John W. Hazeltine, citizens of the State of Pennsylvania, administrators *de bonis non* of the estate of Jacob Idler, deceased, are plaintiff- in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff- in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Marcus W. Acheson, judge of the circuit court of the United States, this — day of March, in the year of our Lord one thousand eight hundred and ninety-four.

M. W. ACHESON, *Cir. J.*

I hereby accept service of the within citation.

HENRY R. EDMUNDS,
Of Counsel for Borgmeyer.

In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

CHARLES BORGMEYER, a Citizen of the State of New Jersey, Administrator of the Estate of Alexander Chataing, Deceased,
vs.
WILLIAM IDLER and JOHN W. HAZELTINE, Citizens of the State of Pennsylvania, Administrators *de bonis non* of the Estate of Jacob Idler, Deceased.

No. 1. October Session, 1892.

UNITED STATES OF AMERICA, *Eastern District of Pennsylvania*, } *ss:*

Pleas and proceedings before the honorable judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October sessions, 1892, No. 1.

It is thus contained:

Be it remembered, that on the fifteenth day of September in the year of our Lord one thousand eight hundred and ninety-two, Charles Borgmeyer a citizen of the State of New Jersey, administrator of the estate of Alexander Chataing, deceased, by his
5 counsel Henry R. Edmunds, Esquire, comes into our court here and sues forth therefrom a writ of summons against William Idler and John W. Hazeltine, citizens of the State of Pennsylvania, administrators *de bonis non* of the estate of Jacob Idler, deceased, which with the endorsement and return thereto is in the words and figures following, to wit:

UNITED STATES, *Eastern District of Pennsylvania*, } *sct:*

The President of the United States to the marshal of the eastern district of Pennsylvania, Greeting:

We command you, that you summon William Idler and John W. Hazeltine, citizens of the State of Pennsylvania, adm-istrators *de bonis non* of the estate of Jacob Idler, deceased, late of your district, if they may be found therein, so that they be and appear before the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, of the third circuit, at a session of the same court to be holden at Philadelphia, on the first Monday of October next, to answer to Charles Borgmeyer, a citizen of the State of New Jersey, administrator of the estate of Alexander Chataing, deceased, in a plea of assumpsit.

And have you then there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this fifteenth day of September, A. D. 1892, and in the one hundred and seventeenth year of the Independence of the United States.

SAMUEL BELL,
Clerk of Circuit Court, U. S.

[SEAL.]

Endorsed: No. 1. Circuit court, October session, 1892. Borgmeyer *vs.* Idler *et al.* Summons, assumpsit. Returnable on the first Monday of October next. Henry R. Edmunds, attorney for plaintiff. Filed October 3, 1892. Samuel Bell, clerk.

September 21, 1892, at Philadelphia, in my district, served the within writ on William Idler, by giving him a true and attested copy thereof and making known the contents of the same to him.
Nihil habet as to John W. Hazeltine.
So answers—

ALEXANDER P. COLESBERRY,
U. S. Marshal,
Per JOHN SCHWECHLER, *Deputy.*

And afterwards, to wit, on the twenty-second of September, in the year of our Lord one thousand eight hundred and ninety-two, the plaintiff by his counsel, Henry R. Edmunds, Esq., and Messrs. Phillips and McKenney, come into our said court here and file his statement of claim, which being read, is in the words and figures following, to wit:

6 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

CHARLES L. BORGMEYER, a Citizen of the State of New Jersey, Administrator of the Estate of Alexander Chataing, Deceased, *vs.* WILLIAM IDLER and JOHN W. HAZELTINE, Administrators *de bonis non* of the Estate of Jacob Idler, Deceased.	No. 1. October Session, 1892.

Statement of Plaintiff's Claim.

Plaintiff claims to recover of defendants the sum of twenty-four thousand five hundred dollars, with interest from the first day of February, 1892.

On the fourteenth day of September, 1892, the register of wills of Philadelphia county granted letters of administration to plaintiff, who is a citizen of the State of New Jersey, upon the estate of the said Alexander Chataing, deceased. That prior to said date, to wit, on the sixteenth day of December, 1869, the said register of wills granted letters of administration *de bonis non* upon the estate of the said Jacob Idler, deceased, to the defendants, William Idler and John W. Hazeltine, who are citizens of the State of Pennsylvania, and residents of the district aforesaid.

And plaintiff avers that the said Jacob Idler, deceased, became indebted to the said Alexander Chataing in his lifetime under the following circumstances:

In the year 1821, the said Jacob Idler, then a citizen of Philadelphia, and certain partners of his were creditors of the Republic of

Venezuela for a large balance of money due on account of arms and other material of war sold and delivered; and in pursuit of this debt, about the year 1827, he went thither and resided for several years; and in the end sued that government in its own courts, and after prolonged litigation, recovered judgment against it in September, 1832, for seventy thousand five hundred and twenty-one dollars and eleven cents ($70,521.11). Throughout said litigation the said Chataing, at his instance and request, was his attorney and counsel; and moreover, at his request advanced to him for costs and expenses therein, and for his subsistence, in all, the sum of four thousand four hundred silver pesos, worth one dollar each.

Thereupon, after obtaining said judgment, the said Jacob Idler executed in favor of said Chataing, in consideration of his then past services and advances, two promises in writing, expressed in the Spanish language, a copy of each of which, bearing date
7 at Caracas, together with a translation of each is hereby appended, marked respectively B and A. By the first of these, dated September 5, 1832, the said Jacob Idler promised to pay to the said Chataing ten per cent. (10 %) of the amount of said judgment at such time and in such manner as Venezuela should make payment upon the latter; by the second, dated January 9, 1833, he further promised to repay to the said Chataing out of the first money which should be paid by Venezuela upon said judgment, the said four thousand four hundred (4,400) pesos.

After very great and unlooked-for delays upon the part of Venezuela in satisfying the said judgment, it was made the basis of awards against the Republic in favor of the said Jacob Idler, and the defendants, by certain mixed commissions, authorized thereto by the United States and that Republic in the years 1868 and 1890; and under said awards, since September 3, 1890, and up to the present date Venezuela has paid to and to the order of the said Jacob Idler, or the defendants, by instalments as awarded, a portion of the said judgment, deducting from which portion certain legitimate expenses by the latter incurred in obtaining said awards; there has as yet come to the hands of said Jacob Idler or the defendants, in all, ninety-three thousand nine hundred and eighty-six dollars and sixty-five cents ($93,986.65), for principal and interest. The said Chataing died in the year 1836, and previously thereto the said Jacob Idler, in consideration of the unlooked-for delay aforesaid had advanced to him upon the second promise aforesaid, in values, one thousand and seventy-one dollars and sixty-eight cents ($1,071.68).

By reason whereof said defendants are indebted to the plaintiffs upon the two promises in writing aforesaid, in the just sum of twenty-four thousand five hundred dollars ($24,500) with interest from the 1st day of February, 1892.

HENRY R. EDMUNDS.

PHILLIPS & McKENNEY,
Attorneys for Plaintiff.

DISTRICT OF COLUMBIA, *ss:*

Charles L. Borgmeyer, being duly sworn according to law, says that the facts set forth in the above statement are true, to the best of his knowledge, information and belief.

CHARLES L. BORGMEYER.

Sworn to and subscribed before me this twenty-first day of September, A. D. 1892.

[SEAL.]
[SEAL.]

MARTIN S. DECKER,
Notary Public.

8 "A."

(Translation.)

[SEAL.] Fifth seal for the economic year 1852–1853; value, two reals.

I, Colonel Andres Ybarra, principal registrar of the province, certify: That in the registry of public instruments kept by the Escribano Juan Antonio Hernandez, appears a writing of the following tenor:

Obligation: In the city of Caracas, on the ninth of January, 1833, before me, the escribano publico, and witnesses, appeared Señor Jacob Idler, of this vicinity, and over twenty-five years of age, whom I certify that I know, and exhibited to me a ticket of the following tenor:

Treasury general of Venezuela:—Ticket No. 18:—January 9, 1833: For 20 reals which Señor Alexander Chataing has paid, registry fee, due for 4,000 pesos which Señor Jacob Idler owes to him and promises to pay by a writing agreed to by himself before the Escribano Juan Antonio Hernandez: two pesos for reals:—Copy of an entry made upon folio 2 of the memorandum book of this month. Caracas, date as above (signed) Lecuna—Smith.

As literally appears by the original which remains in the record office in my charge, which I refer to, and certify. Whereupon he said: That he acknowledges that he owes to Señor Alexander Chataing, also a neighbor, and of the "comercio," the amount of 4,400 pesos, of eight reals of silver each, which in coined and current money of account to his satisfaction the latter has furnished him, since the 24th of September, 1831, for expenses of his subsistence, and costs of the prolix and expensive suit pursued against the government of Venezuela in compensation for supplies made in the years 1817, 1820, in virtue of a contract made for himself and absent associates, and, granting to him proper receipt with renunciation of the laws of delivery, exception of *non numerata pecunia*, proofs, &c., of the case,—obliges himself to satisfy it executively, with costs, from the first funds that may be paid him by the government, his debtor,—with his person and estate, present and future, judicial power, submission to this in order that it may compel and constrain him executively to its fulfillment, as if it was by judgment given by consent and passed as a thing adjudged authori-

tatively, and making hereby renunciation of all laws, statutes and rights in his favor, although it may be one that may be propitious and afford a valid exception. The creditor, whom also I certify that I know, being informed of the literal contents of this writing, said that he accepts it according to law, and agrees to wait. Thus respectively have said, granted, and signed—Señores Luis Apestegnia, Manuel Gallosoand, Lorenzo Callett of this vicinity (being witnesses)—Jacob Idler: Alex. Chataing: Before me, Juan Antonio Hernandes, escribano publico.

9 As appears by the original draft of its contents that remains in this record office under my charge, to which I refer. There is no corresponding seal affixed, because the law has not designated one.

Caracas, April 22, 1853, (" hace," " tambien," amended V. 1.)

A. YBARRA.

We the subscribers,—a judge of the province stationed in this city, and the political chief of the canton certify: That Señor Colonel Andres Ybarra, by whom the present document appears authenticated, is the principal registrar of the province as he entitles himself, and that to the documents of the nature of the present one which he issues, credit is due within tribunals of justice, and without.

Caracas, April 23, 1853.

JOSE L. EMASABEL,
Political Chief.

B^{me}. SUAREZ,
Judge of the Province.

I, Manuel M^{a}. Echeandia, governor supreme political chief of the province, certify that Señores Jose Lorenzo Emasabel and Bartolme Suarez, by whom the preceding certification appears authenticated, are as they entitle themselves, the first, the accidental chief of this canton,—and the second, one of the judges of the province, stationed in this capital.

Given and signed by me,—sealed and countersigned by the secretary of this government, in Caracas, the 25th of April, 1853.

MANUEL M. ECHEANDIA.

[SEAL.] EUGENIO ALFONSO, *Secretary.*

I, Rafael Seijas, chief of the section of foreign relations for the Republic of Venezuela,—in the name and with the authority of the minister of this office,—certify the authenticity of the signatures that precede, of the Señores Doctor Manuel Maria Echeandia and Eugenio Alfonso, who are, as they entitle themselves, the former, governor, supreme political chief of the province of Caracas, the second, the secretary of the government.

Caracas, April 26, 1853.

[SEAL.] RAFAEL SEIJAS.

Legation of the United States, Caracas, Republic of Venezuela.

I hereby certify that Señor Rafael Seijas, "gefe de seccion del despacho esteriores de Venezuela," is duly authorized to authenticate the signatures of the Venezuelan public functionaries, and that the foregoing signature purporting to be his, is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of this legation this 26th day of April, in the year of our Lord one thousand eight hundred and fifty-three, and of the Independence of the United States the seventy-seventh.

[SEAL.] J. NEVITT STEELE,
Charge d'Affaires of the United States to the Republic of Venezuela.

10 "B."

(Translation.)

[SEAL.] (Fifth seal for the economic year 1832–1833; value, a real.)

Be it known by this document, that I bind myself to pay to Senor Alexander Chataing, as well on my own account as upon that of my absent associates, a commission of ten per cent. upon the amount of the payment that I am claiming from the government of Venezuela on account of supplies that I made to the aforesaid government in the year 1817 to 1820, as soon as the payment or satisfaction is realized, which the aforesaid government has to make me in virtue of a judgment of the Senor "Juez de Letras" issued on the 18th of the current month. I declare that the aforesaid commission of ten per cent. has been well merited and gained by Señor Alexander Chataing on account of the assistance that he has given me during the prolonged suit which he has pursued against the government, and on account of the numerous acts of diligence which he has performed to that purpose; and in conclusion, on account of the entire direction which he has given to the matter, although no publicly given power has authorized him, since he has discharged exactly and with my consent in all details—the matter referred to, as an honest and careful attorney. For which reason I have given him the aforesaid commission of ten per cent. upon the whole amount that the government has to pay me; *i. e.*, as well upon the principal as upon the interest that I claim from the State. I will make payment of the aforesaid commission of ten per cent. in the same way that the government makes it to me, that is to say, if it makes it to me by instalments in metal I will pay the commission as well in metal by instalments in *pro rata* of the sum that I receive at each installment; and if the government makes me the payment in treasury notes or bonds for the whole amount, or whatever other nature in the same way I will make payment of the aforesaid commission in the same specie or form of treasury notes or bonds. I desire that this document shall have the same force as if it had been a public writing, and renounce all laws that could favor me; in virtue of

which I sign the present document in the presence of three witnesses.

Caracas, September 25, 1832.

(The word "ano" amended. Vale.)

JACOB IDLER.

Witness:
FRAN^co^ RIBAS.
Witness:
J^n^. ZERESA.
Witness:
CIPRIANO MORALES.

Endorsed: 1 October session, 1892, circuit court, U. S., Charles L. Borgmeyer, etc., *vs.* William Idler and John W. Hazeltine, administrators, etc. Statement of plaintiff's claim filed September 22, 1892. Samuel Bell, clerk. Henry R. Edmunds, Phillips & McKenney, attorney- pro plaintiff.

11 And afterwards to wit: on the twentieth day of October, in the year of our Lord one thousand eight hundred and ninety-two, the defendant, William Idler, by his counsel, Edward H. Weil, Esquire and M. Hampton Todd, Esquire, comes into court here and files his affidavit of defense, which being read, is in the words and figures following, to wit:

Circuit Court of the U. S., Eastern District of Penna.

CHARLES L. BORGMEYER, Administrator of the Estate of Alexander Chataing, Deceased, *vs.* WILLIAM IDLER and JOHN W. HAZELTINE, Administrators *de bonis non* of the Estate of Jacob Idler, Deceased.	October Sessions, 1892. No. 1.

William Idler, one of the defendants, being duly sworn, says, that there is a just defense to the plaintiff's claim in this suit, as follows:

1. Deponent is a son of Jacob Idler, who died in the year 1856 and is also one of the administrators of the estate of the said decedent.

2. The said decedent, Jacob Idler, in his lifetime, was associated with certain merchants and firms in contracts made in 1817 to 1822, with the government of Venezuela for supplying clothing, military stores, muskets, etc. These associates with the said decedent in these contracts were Bogert & Kneeland, Thaddeus Phelps & Co., and B. L. Swan, of the city of New York, and Hammond & Newman, of the city of Baltimore. Alexander Chataing, the plaintiff's intestate well knew that these firms were the associates of and interested in the contracts with the said Jacob Idler, and used their names as his principals, and throughout acted for them as well as

for the said Jacob Idler, in the endeavor that was made to obtain payment of the claim upon those contracts. The claim of the plaintiff for 4,400 pesos appears from the plaintiff's statement, to be founded upon an acknowledgement made before the escribano, on the ninth of January, 1833. The defendant is advised that a copy of an acknowledgment is not a copy of a record, nor a copy of any obligation made by the said Jacob Idler, but is merely a declaration made by him before an escribano; and that if the claim is founded upon an obligation, an exact copy of the same should be appended to the plaintiff's statement. In point of fact, this claim of 4,400 pesos, about 4,000 dollars, was paid by the said Jacob Idler during the years 1833, 1834, 1835 and 1836, and a statement of the times of many of its payments is hereto annexed. A payment of ten hundred and seventy-one dollars and sixty-eight and three-fourths cents was made on account, to the said Alexander Chataing, who admitted to have received this sum some time previously, on account, by his letter dated June 6, 1834. Payment on account was also made by the collection of notes and bills for the said
12 Jacob Idler, which he, Chataing, acknowledged to have received on May 15, 1833, and also by goods ordered by and shipped to the said Alexander Chataing by the said Jacob Idler, on the dates mentioned in the statement hereto annexed.

3. As to the second item of the plaintiff's claim, for ten per cent. commission, deponent says, that the efforts to obtain payment of the claim from the government of Venezuela proved unsuccessful and fruitless. The agreement was to pay to the said Chataing a commission, if the judgment in Venezuela had been paid by that government when it was prosecuted in that country, and when received by Mr. Idler from that government. The said Jacob Idler returned to the United States in 1833, where he resided until his death. Proceedings were begun by Venezuela about 1834 to have the judgment annulled, and Chataing refused to act further in the matter for Idler and his associates. He died some time in August, 1836, and in the year 1839, whether lawfully or unlawfully, the highest court of that country annulled the judgment.

From the year 1833, the said Jacob Idler and his associates, during the lifetime of the said Jacob Idler, employed other agents and attorneys to endeavor to obtain payment of the said claim against Venezuela; and after his father's death, deponent continued these efforts with said associates, and employed other agents and attorneys. From the administration of President Jackson to the present administration, the efforts to obtain the interposition of the executive and the State Department of the United States have been unintermittent, and the subject of this claim has been before Congress in very many shapes, and before its Committee on Foreign Affairs, for many years. A treaty was concluded between the United States and Venezuela on the 25th of April, 1866, under which a mixed commission was appointed to determine the validity of claims against Venezuela. This claim of Idler and his associates was presented to the mixed commission that sat at Caracas in 1868, under that treaty. Its validity was denied by Venezuela, its commissioner

voted against its validity, and it was allowed by the vote of the umpire. The award to the estate of the said Jacob Idler and his associates was two hundred and fifty-two thousand eight hundred and fourteen dollars. In the year 1871, there was paid by the Department of State of the United States to the holders of the certificates under this award the sum of seventeen thousand six hundred and ninety-six dollars and ninety-eight cents, and also in the year 1876, the further sum of twenty thousand two hundred and twenty-five dollars and twelve cents. From the time of the award up to the second mixed commission of 1890, referred to hereafter, Venezuela contested the validity of this award. By the treaty of June 4, 1889, between the United States and Venezuela, all of the awards in favor of the citizens of the United States against Venezuela made by the Caracas commission were reopened. A mixed commission or court, in 1890, appointed under that treaty, heard and determined in the city of Washington the validity of this claim of Idler and his associates *de novo;* and under the provisions of the treaty, it became the duty of the commission or court to examine and ascertain whether any parties, with due regard to the principles of justice and equity,
13 had any vested rights or interests, and to fix the amount of their interests and award certificates to such parties; and it was further provided by the treaty, that the payment of the awards, in instalments, should be made to the United States. No claim was made before the said commission or court for or on account of any interest in this award by Alexander Chataing or his estate. The commission or court reopened the award made by the Caracas commission, heard and decided as to the validity of the claim, reduced the award, and made a division of the certificates between all whom the court decided had interests therein. This decision of the court in favor of the validity of the claim was made by a majority of its members, the Venezuela commission dissenting. But a small portion of the award was adjudicated in favor of the estate of Jacob Idler. The amount of the certificates issued to the associates and others interested was about three times the amount of the certificate awarded to the estate of Jacob Idler, which was ninety-two thousand five hundred and fifty-nine dollars and forty-six cents.

6. From the year 1833 down to the year 1891, no claim or demand of any nature was made by the said Alexander Chataing in his lifetime or after his death, against the said Jacob Idler in his lifetime or his associates. No claim or demand of any nature or kind against the estate of the said Jacob Idler or against his associates, was made by the estate of the said Alexander Chataing or by any person for his estate or heirs for or on account of the claims in this suit, until the year 1891, a period of fifty-eight years.

7. Deponent for and on behalf of the estate of the said Jacob Idler, sets up the bar of the statute of limitations to the claims of the plaintiff in this suit.

8. Deponent for and on behalf of the estate of the said Jacob Idler, sets up presumption of payment as to the claims of the plaintiff in this suit.

9. The deponent verily believes and expects to be able to prove the facts herein stated upon trial.

WILLIAM IDLER.

Sworn and subscribed before me this twentieth day of October, 1892.

SAMUEL BELL,
U. S. Commissioner.

Alexander Chataing to Jacob Idler, Dr.

1833.				
May	15.	Paid to A. Chataing sundry notes given by J. Idler	$1,048	65½
May	16.	For the sum of $1,057.68 paid to A. Chataing.	1,057	68
Nov.	4.	Paid Hoes & shipped to A. Chataing by J. Idler	217	80
"	20.	Paid invoice & shipped to A. Chataing by J. Idler	285	48
14				
1834.				
Feb.	22.	Paid invoice to A. Chataing by J. Idler	4	75
March	20.	" do. do. do.	11	46
May	20.	" do. do. do.	14	72
June	6.	" A. Chataing as per his letter, to this date.	1,071	68¾
June	7.	" invoice to A. Chataing by J. Idler	272	25
June	24.	" A. Chataing	619	01¼
1835.				
Oct.	5.	" invoice to A. Chataing by J. Idler	49	22½
Nov.	11.	" do. do. do.	49	00
1836.				
July	18.	" do. do. do.	53	50
Aug.	20.	" do. do. do.	60	00
"	"	" to A. Chataing by J. Idler	156	76

Endorsed: Circuit court of the U. S. eastern district of Penn. October session, 1892, No. 1. Charles L. Borgmeyer, administrator of the est. of Alex. Chataing, dec'd, *vs.* William Idler & John W. Hazeltine, adms. *d. b. n.* of the est. of Jacob Idler, dec'd. Affidavit of defense filed Oct. 20, 1892. Samuel Bell, clerk. E. H. Weil, M. Hampton Todd, att'ys for defendants.

And afterwards to wit on the 26th day of April in the year of our Lord one thousand eight hundred and ninety-three, the defendants by their counsel come into court here and file their pleas and notice of matters of defence, which being read is in the words and figures following, to wit:

Circuit Court of U. S., Eastern District of Pennsylvania.

CHARLES L. BORGMEYER, Administrator of the Estate of Alexander Chataing, Deceased, *vs.* WILLIAM IDLER and JOHN W. HAZELTINE, Administrators *d. b. n.* of the Estate of Jacob Idler, Deceased.	October Sessions, 1892. No. 1.

The defendants plead non-assumpsit, payment, set-off and the bar of the statute of limitations.

Upon the trial of this suit, the defendants will give in evidence, under the above pleas, the matters of defence fully set forth in the affidavit of defence filed in this case.

M. HAMPTON TODD,
EDWARD H. WEIL,
Att'ys for Defendants.

April 26, 1893.

15 Endorsed: Circuit court of the United States, eastern district of Pennsylvania. October session, 1892. No. 1. Charles L. Borgmeyer, administrator of the estate of Alexander Chataing, deceased, *vs.* William Idler and John W. Hazeltine, adm'rs *d. b. n.* of the estate of Jacob Idler, dec'd. Defendants' pleas and notice of matters of defence. Filed Apr. 26, 1893. Samuel Bell, clerk. M. Hampton Todd, Edward H. Weil, att'ys for def'ts.

And thereupon it is ordered that a jury come to try the issues joined in this case.

And afterwards, to wit, on the 12th day of October, A. D. 1893, come the parties aforesaid, and the jurors of the jury aforesaid, being called likewise come, to wit:

William S. Keefer,	S. F. Kelchner,
John S. Heiser,	Joseph Detling,
Francis M. McKeehan,	George McCall,
Decatur Holbert,	Oscar McMullin,
Thomas B. Lancaster,	Wm. B. Levan,
Frederick Greiman,	Oliver Parker.

who are duly empaneled, returned, chosen, tried and sworn or affirmed to speak the truth, etc., in the issue joined in this case.

And afterwards, to wit, on the 16th day of October, A. D. 1893, the jurors aforesaid upon their oaths or affirmations aforesaid, respectively do say that they find for the plaintiff and assess the damages at twenty-seven thousand six hundred and seventy-two $\frac{30}{100}$ dollars ($27,672.30.)

And afterwards, to wit, on the 18th day of October, A. D. 1893, the defendants by their attorneys come into our said court here and moves the court for a new trial, and file the following reasons therefor, to wit:

U. S. C. C. T.

CHATAING'S ADMINISTRATOR
vs.
IDLER'S ADMINISTRATOR.
} October Session, 1892. No. 1.

And now, October 18, 1893, the defendants, by leave of the court and without waiving their right to a bill of exceptions, move the court for a new trial and assign the following reasons, namely:

First. The verdict is against the evidence.

Second. The verdict is against the law.

Third. The court erred in instructing the jury to find for the plaintiff.

Fourth. The court erred in not instructing the jury to find for the defendant.

Fifth. The court erred in not instructing the jury that the presumption of payment was a bar to the plaintiff's recovery under agreement Exhibit "A" of plaintiff's statement in his cause of action.

16 Sixth. The damages are excessive.

Seventh. The court erred in instructing the jury to allow the plaintiff's claim of ten per cent. commission on monies never awarded to defendants and never received by them.

Eighth. The court erred in allowing plaintiffs to recover ten per centum commission on the amounts of the awards and payments, made to the associates of Jacob Idler and those claiming under them, by the international commissions.

Ninth. The court erred in refusing to affirm defendants' first point as follows, namely:

"First. That more than six years have elapsed before suit was brought since the right of action accrued on the loan or advance of four thousand four hundred pesos as set forth in Exhibit 'A' of plaintiff's statement, no recovery can be had on the same in this action." And in answering said point as follows: "We cannot so charge under the decisions of the supreme court of this State, which governs us. The parties are subject to the laws of the State as respects all matters affecting the remedy."

Tenth. The court erred in refusing to affirm defendants' second point as follows, namely:

"Second. That more than twenty years having elapsed before suit was brought since the right of action accrued on the loan or advance of four thousand four hundred pesos as set forth in Exhibit 'A' of plaintiff's statement, the law presumes the same to have been paid and satisfied."

And in answering said point as follows: "I must disaffirm this point. Inasmuch as there was no one to whom payment could be made, there is no presumption of payment; it would be illogical to presume such payment with the fact before us that there was no one to whom payment could be made—administration not having been raised until very recently. The money was not due in the lifetime of the decedent and the statute did not therefore commence running until after his death."

Eleventh. The court erred in refusing to affirm defendants' third point as follows:

"Third. The statute of limitations and the presumption of payment in law, arising from the lapse of time, are both bars to any recovery by the plaintiff in this action on his demand under agreement," Exhibit "B."

Twelfth. The court erred in refusing to affirm defendants' eleventh point, as follows:

"Eleventh. That under the terms of the treaties between the Governments of the United States and Venezuela, the claim of Alexander Chataing as set forth in Exhibit 'B' should have been presented to the mixed commission provided for in said treaties, and that not having been done, the claim cannot be maintained in this action."

M. HAMPTON TODD,
EDWARD H. WEIL,
Attorneys for Defendants.

17 Endorsed: No. 1. Oct. sess., 1892. U. S. C. c't, E. D. of Pa. Chataing's Adm'r *vs.* Idler's Adm'r. Motion and reasons for a new trial. Filed Oct. 18, 1893. Samuel Bell, clerk. Todd. Weil.

And afterwards, to wit, on the day and year last aforesaid, the defendants by their attorneys come into our said court here and moves the court for judgment, notwithstanding the verdict on the points reserved by the court at the trial, which being read, is in the words and figures following, to wit:

U. S. Circuit Court.

CHATAING'S ADMINISTRATOR *vs.* IDLER'S ADMINISTRATOR. } October Session, 1893. No. 1.

And now, October 18, 1893, the defendants by their attorneys move the court for judgment notwithstanding the verdict on the points reserved by the court at the trial, namely:

Defendants' fourth point, as follows:

Fourth. The construction of the contract for compensation is for the court. It was not in contemplation of the parties to the contract that Chataing should receive compensation for an award made by an international tribune many years after his death, presented and prosecuted by other agents and attorneys; Venezuela having declined and refused payment, there can be no recovery based upon any award made in Caracas in 1868 or in Washington in 1890 (Pemberton *vs.* Locket, 21 Howard, 257); and the verdict under all the evidence for the defendant.

Defendants' sixth point, as follows:

Sixth. That the undisputed evidence in this case is that no payments have been made by the government of Venezuela on account

of the judgment rendered against it and which is set forth in said Exhibit "B" of plaintiff's statement and therefore should be for the defendant.

Defendants' seventh point, as follows:

Seventh. That the undisputed evidence in the case is that no payment has ever been made by the government of Venezuela on account of the original judgment or sentence of her courts, and she has uniformly refused and resisted payment of it for more than fifty years past, therefore no obligation to make payment has occurred under Exhibit "B" of the plaintiff's statement in this action, and therefore verdict should be for the defendant.

Defendants' eighth point, as follows:

Eighth. That the effect of the treaties between the Government of the United States and Venezuela on the Idler claim was to nullify and set aside the judgment referred to in Exhibit "B" and remit the claimants to their original claims, subject to all just and equitable defences.

18 Defendants' ninth point, as follows:

Ninth. The award in favor of Idler and his associates was made by an international commission administering justice and equity for the supplies, etc., furnished by them to that government, and was a sentence or award after full examination of the merits of the claim, irrespective of the original sentence of the Venezuelan court.

Defendants' tenth point, as follows:

Tenth. By the decree of *restitutio in integrum* the judgment in favor of Idler and his associates was annulled in Venezuela. More than fifty years afterwards, an international tribunal made an award to these parties, and the moneys they received were based upon that award, and there can be no recovery in this suit.

Defendants' twelfth point, as follows:

Twelfth. Upon the whole evidence the verdict should be for defendant.

M. HAMPTON TODD,
EDWARD H. WEIL,
Att'ys for Defendants.

Endorsed: 1 October session, 1892, U. S. C. c't, E. D. of Pa. Chataing's Adm'rs *vs.* Idler's Adm'rs. Motion for judgment for defendant notwithstanding the verdict on the points reserved at the trial. Filed October 18, 1893. Samuel Bell, clerk. Todd, Weil.

And afterwards, to wit, on the sixth day of February, A. D. 1894, come the parties aforesaid by their counsel aforesaid and this cause being called for argument on motions for new trial, and for judgment *non obstante veredicto*, and having been argued by counsel for the respective parties and the court not being fully advised in the premises takes further time for the consideration thereof.

And afterwards, to wit, on the twenty-seventh day of February, A. D. 1894, come the parties aforesaid by their counsel aforesaid,

and the court now being fully advised, file the following opinion, to wit:

CHARLES BORGMEYER, Administrator of the Estate of Alexander Chataing, Deceased,
vs.
WM. IDLER and JOHN W. HAZELTINE, Administrators *de bonis non* of the Estate of Jacob Idler, Deceased.
} No. 1. October Session, 1892.

BUTLER, *J.:*

On the trial it appeared that between 1817 and 1820 Jacob Idler, of Philadelphia, and certain associates furnished Venezuela, then engaged in war, with various military supplies, on account of which she became their debtor in a large sum of money. After peace had been declared Mr. Idler, on his own account and as agent for
19 his associates, proceeded to collect the amount due. Encountering difficulties, he placed the business in the hands of Alexander Chataing a reputable citizen of Caracas. After great labor and extended litigation Mr. Chataing succeeded, on September 18, 1832, in obtaining a judgement in Mr. Idler's name for $70,520.11½. In the meantime Mr. Chataing had furnished Mr. Idler a large sum of money to enable him to live in Venezuela (where he had gone to assist about the business) and to carry on the litigation.

A few days after the judgment was obtained (Sept. 25, 1832,) Mr. Idler entered into the following obligation of record with Mr. Chataing.

"[SEAL.] (Fifth seal for the economic year 1832–1833; value, a real.)

"Be it known by this document, that I bind myself to pay to Senor Alexander Chataing, as well on my own account as upon that of my absent associates, a commission of ten per cent. upon the amount of the payment that I am claiming from the government of Venezuela on account of supplies that I made to the aforesaid government in the years 1817 to 1820, as soon as the payment or satisfaction is realized which the aforesaid government has to make me in virtue of a judgment of the Senor 'Juez de Latras' issued on the 18th of the current month. I declare that the aforesaid commission of ten per cent. has been well merited and gained by Senor Alexander Chataing, on account of the assistance that he has given me during the prolonged suit which he has pursued against the government, and on account of the numerous acts of diligence, which he has performed to that purpose; and in conclusion, on account of the entire direction which he has given to the matter, although no publicly given power has authorized him, since he has discharged exactly, and with my consent in all details, the matter referred to, as an honest and careful attorney. For which reason I give him the aforesaid commission of ten per cent. upon the whole amount that the government has to pay me; *i. e.* as well upon the principal as upon the interest that I claim from the State. I will

make payment of the aforesaid commission of ten per cent., in the same way that the government makes it to me, that is to say, if it makes it to me by installments in metal I will pay the commission as well in metal by installments in *pro rata* of the sum that I receive at each installment; and if the government makes me payment in treasury notes or bonds for the whole amount, or whatever other nature in the same way I will make payment of the aforesaid commission in the same specie of form of treasury notes or bonds. I desire that this document shall have the same force as if it had been a public writing, and renounce all laws that could favor me; in virtue of which I sign the present document in the presence of three witnesses.

Caracas, September 25, 1832.

The words 'ano' amended Vale.

JACOB IDLER.

Witness:
FRAHCO RIBAS.
Witness:
J. N. ZERESA.
Witness:
CIPRIANO MORALES."

20 On January 9th, 1833, Mr. Idler entered into a second obligation of record with Mr. Chataing in the following terms:

"(SEAL;) Fifth seal for the economic year 1852–1853; value two reals.

I, Colonel Andreas Ybarra, principal registrar of the province—certify; that in the registry of public instruments kept by the escribano Juan Antonio Hernandez, appears a writing of the following tenor.

Obligation.—In the city of Caracas, on the ninth of January, 1833, before me the escribano publico and witnesses, appeared Señor Jacob Idler, of this vicinity, and over twenty-five years of age, whom I certify that I know, and exhibited to me a ticket of the following tenor:

Treasury general of Venezuela: Ticket No. 18: January 9th, 1833: For 20 reals which Señor Alexander Chataing has paid registry fee, due for 4,000 pesos which Senor Joseph Idler owes to him and promises to pay by a writing agreed to by himself before the escribano Antonio Hernandez: two pesos four reals: Copy of an entry made upon folio 2 of the memorandum book of this month. Caracas, date as above (Signed) Lecuna Smith.

As literally appears by the original which remains in the record office in my charge, which, I refer to, and certify.

Whereupon, he said: That he acknowledges that he owes to Senor Alexander Chataing, also a neighbor, and of the "commercio," the amount of 4,000 pesos, of eight reals of silver each which in coined and current money of account to his satisfaction the latter has fur-

nished him, since the 24th of September, 1831, for expenses of his subsistence, and costs of the prolix and expensive suit pursued against the government of Venezuela in compensation for supplies made in the years 1817, 1820, in virtue of a contract made for himself and his absent associates and, granting to him proper receipt with renunciation of the laws of delivery, exception of *non numerata pecunia*, proof, &c., of the case,—obliges himself to satisfy it exclusively, with costs, from the first funds that may be paid him by the government, his debtor—with his person and estate present and future, judicial power; submission to this in order, that it may compel and constrain him executively to its fulfillment, as if it was by judgment given by consent and passed as a thing adjudged authoritatively, and making hereby renunciation of all laws, statutes and rights in his favor, although it be one that may be propitious and afford a valid exception. The creditor, whom also I certify that I know, being informed of the literal contents of this writing, said that he accepts it according to law and agrees to wait. Thus respectively have said, granted, and signed,—Senors Luis Apesteguia, Manuel Gailoso and Lorenzo Callett of this vicinity (being witnesss) Jacob Idler: Alex. Chataing: Before me, Juan Antonio Hernandez, escribano publico.

When Mr. Idler demanded payment of his judgment Venezuela procrastinated, and eventually denied liability and sought to rid herself of the judgment.

Failing to accomplish the latter by an appeal to the supreme court (where the judgment was affirmed) she resorted to a
21 proceeding known in that country as the "remedy of *restitutio in integram*," which, if not obsolete at the time, was clearly inapplicable to the case, and by this means, and a reorganization of the courts to suit her purposes, she obtained what purported, and was intended, to be a nullification of the judgment.

In the meantime Mr. Idler, in dispair of obtaining redress at the hands of Venezuela or her courts, had returned to Philadelphia, and in conjunction with other persons having claims against Venezuela, sought the aid of his own Government in the enforcement of his and their rights. After the lapse of many years (in 1867) a treaty was signed between the United States and Venezuela, whereby commissioners were appointed to examine and settle these claims. This commission sat at Caracas, and in 1868 made an award which sustained the claim of Idler and his original associates—taking the judgment of 1832 as the basis of the claim, treating it (the judgment) as valid and binding—adding interest thereto, and awarding accordingly the sum of $252,814.00.

Under this award Venezuela, on June 21, 1871, paid $17,696.93. She was dissatisfied, however, with the result of the commission, and sought to escape it. In 1873 the Congress of the United States declared the award final. Following this (May 16, 1876), she paid a further sum of $20,224.27. She continued, however, to express dissatisfaction and in 1878 Congress repealed the statute of two years previous, declaring it to be without prejudice to the rights of the

claimants under the previous award. The President of the United States continued to press for payment of the award; and in 1889 another treaty was entered into with Venezuela, whereby a second commission was appointed, which met at Washington in 1890.

After a very full and protracted hearing this commission also sustained the claim of Idler and his original associates, taking the judgment of 1832 which it held to be valid and binding, as its basis, adding interest, as the former commission had, and crediting the payments made under the former award. In pursuance of this second award, $48,374.60 were paid October 15, 1890, and $20,330.64 January 23, 1892.

The record of proceedings before the commissions, as well as numerous other papers and documents connected with the claim, and the litigation thereon, are in evidence, and exhibit many facts of more or less importance, not embraced in the foregoing statements, some of which will be referred to hereafter.

The plaintiff sues on the two obligations given Mr. Chataing, (who died in 1836), to recover the amount due from the several sums recovered from Venezuela.

The defendant requested the court to charge as follows:

"Fourth. The construction of the contract for compensation is for the court. It was not in contemplation of the parties to that contract that Chataing should receive compensation for an award made by an international tribunal many years after his death, presented and prosecuted by other agents and attorneys. Venezuela
22 having declined and refused payment there can be no recovery based upon any award made in Caracas in 1868 or in Washington in 1890 (Pemberton *vs.* Lockett, 21 Howard, 257); and the verdict under all the evidence must be for the defendant.

"Sixth. The undisputed evidence in this case is that no payments have ever been made by the government of Venezuela on account of the judgment rendered against it and which is set forth in said Exhibit "B" of plaintiff's statement, and therefore the verdict should be for the defendant.

"Seventh. The undisputed evidence in this case is that no payments have ever been made by the government of Venezuela on account of the original judgment or sentence of her courts, and she has uniformly refused and resisted payments of it for more than fifty years past; therefore no obligation to make payment has accrued under Exhibit "B" of the plaintiff's statement in this action, and the verdict should be for the defendant.

"Eighth. The effect of the treaties between the Government of the United States and Venezuela on the Idler claim was to nullify and set aside the judgment referred to in Exhibit B and remit the claimants to their original claims, subject to all just and equitable defences.

"Ninth. The award in favor of Idler and his associates was made by an international commission administering justice and equity, for the supplies, &c., furnished by them to that government, and was a sentence or award, after full examination of the merits of the claim, irrespective of the original sentence of the Venezuela court.

"Tenth. By the decree of *restitutio in integrum* the judgment in favor of Idler and his associates was annulled in Venezuela. More than fifty years afterwards an international tribunal made an award to these parties, and the moneys they received were based on that award, and there can be no recovery in this suit.

"Twelfth. Upon the whole evidence the verdict should be for the defendant."

Counsel agreeing that the questions involved were for the court alone, the jury was directed to find for the plaintiff in the amount of his claim—the defendant's points requesting a different direction being reserved. Subsequently the defendant took a rule for judgment notwithstanding the verdict, and also a rule for new trial—which rules are now under consideration. Each will be disposed of in its order.

To answer the points separately is unnecessary. A sufficient answer to each will be found in the following discussion of the case.

The first matter for consideration is: What is the proper construction of the earlier of the two obligations sued upon? This obligation is in substance for the payment of ten per cent. of the judgment obtained by Idler, when satisfaction is realized upon it. He is to be paid from this source alone. Although the consideration is stated to be past services of great merit, he cannot recover anything if nothing is realized from this source. The language of the obligation is unequivocal, and we are not at liberty to speculate about the meaning of the parties; we must find it in what they have said. Chataing chose to accept, as satisfaction for his services,
23 the stipulated percentage of what might be collected on the judgment; and Idler obliged himself to pay this amount, in this manner. The former did not undertake to collect the judgment. The parties, of course, contemplated its payment; and probably supposed it would be soon, and without further litigation. This supposition is, however, unimportant. The duty of collecting it was on Idler. If the trouble and expense was greater than had been contemplated it concerned him alone. His obligation is, in terms, unconditional and absolute; and no condition can be read into it by conjecture. If he desired such condition he should have required it. Chataing would then have been at liberty to accept the obligation or to reject it and demand immediate payment of the debt—which was overdue. Why should he not, under such circumstances, have demanded immediate payment? The consent to await collection of the judgment seems very liberal; why should he suffer from Idler's subsequent misfortune? A different view would deprive him of a right to recover anything on a debt which Idler acknowledged to be due and highly meritorious, if the latter should incur labor and expense in recovering his money—would attribute to him the folly of agreeing to abandon his debt if Idler should encounter this misfortune. The case bears no material resemblance to Pemberton *vs.* Lockett, 21 How., 257, cited by the defendant, where the contract was, mainly, for future services, the performance of which became impossible because of a total change

of circumstances, as stated by the court in that case. Bachman *vs.* Lawson, 109 U. S., 659, nearer in point.

The second question is: Was the money which has been received collected on this judgment? It is unimportant how Venezuela considered this; how should it be considered as between Chataing and Idler? In entering upon this inquiry it must be remembered that the judgment could not be collected by ordinary execution. Satisfaction could only be obtained through voluntary payment by the debtor, or the intervention of the creditor's government. Venezuela refused to pay, and the creditor's government intervened and collected the money. Was it collected on the judgment? Substantially it was. A full examination of the evidence leaves no doubt of this. At all times, from the rendition of the judgment in 1832, until the award of the last commission, the contention of Idler's administrator and his counsel, has been that the proceeding *restitutio in integrum* was illegal and void, that the judgment was unimpeached, valid and conclusive, and that Venezuela should pay accordingly. Before the first, as well as the second commission, this was Idler's position. From the time his government intervened to aid him, this was its attitude. On the one side the effort was to sustain and collect the judgment, and on the other to show that it no longer existed. So the respective commissions regarded the controve-sy; and finding the judgment alive and valid, they awarded the amount of its face, $70,520, with interest added to date. The opinions filed by Mr. Talmage, the United States commissioner, and Mr. Machado, the umpire, of the first commission, show these facts (so far as they relate to that commission), with such distinctness and clearness that I am constrained to annex copies of them to this opinion.

24 In 1889, when preparing to appear before the second commission, Idler's administrator and his counsel prepared a statement of his case, in the form of a petition, in which, after giving a history of the claim and the litigation upon it, asserting the binding and conclusive force of the judgment of 1832, they state the petitioner's attitude before the first commission, and the conclusions of that commission, as well as his attitude before the second commission, as follows:

"The claim of your petitioner's intestate was duly presented on or about the twenty-ninth of April, 1868, to the mixed commission which was organized at Caracas under the aforesaid treaty of April 25, 1866, between the United States and Venezuela, and that the administratrix of his estate claimed for and on account of the aforesaid judgment of the supreme court of Venezuela and the previous judgments of the courts below, confirmed thereby, the sum of $70,529.11½, awarded by the aforesaid final arbitrator, Jose Cadenas, with interest thereon at the rate of six per cent. per annum from June 30, 1825 (to which date interest at that rate had been included in said award), until the first day of October, 1832, when the said award was confirmed by the said superior court at Caracas, amounting at that time, principal and interest, to the sum of $101,209.28, and interest thereon at the rate of six per cent. per annum from Oc-

tober 1, 1832, to August 1, 1868, the date of the decision of the umpire of the said mixed commission, amounting to $217,509.95, and making in all the sum of $318,809.23; that, upon the disagreement of the commissioners, the said claim was referred to the umpire of the said mixed commission, who made an award in favor of your petitioner's intestate in the sum of $252,314; that the said umpire, instead of calculating interest on the aforesaid award of Jose Cadenas to the date of its confirmation by the aforesaid superior court, and then calculating interest on the sum total due upon that judgment, calculated simple interest from June 30, 1825, at the rate of six per cent. per annum, on the amount awarded by the said Cadenas, to the date of his own award, thus giving the Venezuelan government an undue advantage of more than $65,000."

The counsel who appeared for the United States before the second commission (Mr. Ashton), commences his statement of the Idler claim in these words: "The claim in this case originated in four contracts made between Jacob Idler, a citizen of the United States, and the Venezuela government, in and prior to the year 1820, and is based upon a judgment of the supreme court of Caracas rendered on the first of October, 1832, in favor of Idler, affirming a judgment of the jury de letras de hacendi (treasury court) entered September 18, 1832, upon an award made in his favor by Jose Cadenas at Caracas, on the 11th of September, 1832."

The brief throughout is consistent with this statement—the source and foundation of the claim being the judgment of 1832.

The opinion of this commission was delivered by Mr. Little, and is found at page 155 to 194 of its records. He starts out with a statement of the questions involved, as follows: "How far is the judgment of 1832 to be accepted as binding in the proceeding
25 before us? Was the court, organized for the Idler case, (the court that applied the *restitutio in integrum* remedy) for the Idler case in 1836, a legal body? If not, were its proceedings valid? Did the remedy *restitutio in integrum* pertain to Venezuela as respects the Idler case? If so, did the proper court obtain jurisdiction in the premises? Was the general effect of the proceedings of 1836–'39 a denial of justice? If so, should the judgment of 1832 be allowed to stand?" After these questions are considered at great length they are answered in favor of Idler,—the *restitutio in integrum* proceedings held to be unlawful and void—the judgment to be valid and binding upon Venezuela, the opinion terminating as follows: "Our conclusion from the foregoing considerations is that the proceedings in *restitutio* were, as against Idler, and are against the claimant a nullity. This is the best we can say of them. The judgment of 1832, standing as it does, unaffected by the subsequent proceedings, must be sustained unless manifestly wrong." He then examines it on other objections raised, in which he finds no substance, and concludes as follows: "An entry can be prepared, allowing the claimant the amount of the judgment, $70,520, omitting the odd cents, with six per cent. interest, that being the rate named in the contracts, from October 1, 1832, (when the judgment was affirmed by the Supreme Court) to September 2, 1890, inclusive, less

the deductions on account of payments made on the former awards. The same to be distributed as per agreement on file, dated March 17, 1868. A decree was prepared and entered accordingly.

In view of these facts I can entertain no doubt that the money collected must be regarded as realized on the judgment; the fruits of its execution by the Government of the United States.

The third question is: What is the proper construction of the second obligation? This presents no difficulty. The undertaking is, in effect, for the payment of 4,400 pesos "from the first funds that may be paid him (Idler) by the government of Venezuela, his debtor," in consideration of money theretofore furnished him for his support in Venezuela, and to enable him to prosecute his claim against that country. And as the obligation states, Mr. Idler "accepted it for his debt and agreed to wait."

Here no question arises respecting the right to payment from the money received,—unless the claim is subject to some other defence. Like the earlier obligation it was not due, however, until money was received from Venezuela in 1871, and no interest is therefore recoverable on it prior to that date. It was an obligation to pay a sum certain on the happening of a described event, and the payment of this sum when the event occurred would have discharged it.

It follows from what has been said that judgment cannot be entered for the defendant in pursuance of his points.

Should a new trial be granted? It is asked for on the ground of after-discovered evidence, and an excessive estimate of the amount due. As respects the first there is no room for difficulty. There is no after-discovered testimony that should not have been pre-
26 viously discovered, if wanted. This is all I need say on that subject; but it may not be improper to add that I am not satisfied that the evidence referred to would be material if heard.

The second ground involves several considerations. I do not find any evidence of payments on account, beyond the plaintiff's credits.

The statute of limitation does not apply, inasmuch as there was no administration on Chataing's estate until recently, and there was no one, therefore, to receive the money or sue for it; Marsteller *vs.* Marsteller, 93 Pa. R., 350.

Nor did a presumption of payment run as respects the proportion claimed of the money received in 1871, for the same reason. There was no one who had a right to demand it—no one to whom it could lawfully be paid. It may be said that Chataing's heirs could have qualified themselves to receive, and to sue for it. But such an argument applies with equal force to the plea of the statute, in such cases. It is wholly illogical to say that the presumption of payment runs under such circumstances, and that the statute, which is founded on the presumption (and applied to simple contract debts) does not. The defendant cites and relies on Foulks *vs.* Brown, 2 Watts, 215. A careful examination of this case shows that the court there conceded that under ordinary circumstances the absence of administration precludes the presumption of payment, and puts the decision on the ground, distinctly and exclusively, that while the plaintiff,

(the decedent's husband) could not sue without administering, he was absolute owner of the claim, had complete authority to receive it and to enforce payment, during his wife's lifetime, and that therefore the presumption ran against him. The administration after her death was necessary only to meet a legal technicality. The money was his unconditionally. It was not applicable to the decedent's debts; she could have none under the existing law.

Here the money was not due, as we have seen, until 1871; and Chataing then being dead and no legal representatives appointed until recently before suit, no presumption of payment can arise. If the circumstances were different, however, I am inclined to believe the evidence here would repel the presumption. The obligations as we have seen were payable alone out of the money received from Venezuela, and I think it appears quite distinctly that they were not paid from this course. But it is unnecessary to pursue the subject.

Independently, however, of this defence (which goes to a part of the claim) the defendant says the verdict is too large; and this, I think, is true.

What should the plaintiff recover? Sympathizing with Idler's misfortune in his endeavors to realize on the judgment, the plaintiff has waived claim to a percentage of the one-third paid Mr. Whiton, an attorney, for services subsequent to the judgment. To ascertain the amount due we must take the sum paid in 1871, $17,696.98, and deducting one-third ($5,898.99) ascertain the amount due from the remainder, on the obligation of 1832, and after subtracting this, deduct the amount due on the obligation of 1833, $2,887.76.

27 Thus we find what should have been paid on these obligations in 1871. Adding interest to the date of verdict, we have the amount due on that account at that date. Taking ten per cent. of two-thirds of each subsequent payment, and adding interest will, when added to the sum just stated, show the whole amount due from the defendant. The annexed table is an illustration, and shows the sum due to be $20,239.97, being $7,432.33 short of the verdict. If the plaintiff will release this amount, he can have judgment for the balance. Unless he does so, in writing within twenty days from this date, a new trial will be granted.

The defendant thinks that as he received but one-third of the amount collected from Venezuela, he is liable (if at all) only on account of that sum. This is a mistake. The failure to receive more was the result of his voluntary act, and affects him and those with whom he acted; alone. Shortly before the commission of 1868 assembled, Idler's administrator entered into an agreement with his original associates defining their respective interests, and providing for a direct distribution to the several parties, of their shares of the money which might be collected. This agreement did not affect the rights of Chataing or his legal representative, under the obligations in suit. As respects that of 1832, as we have seen, Idler bound himself for ten per cent. of what might be collected on the judgment. The obligation bound his associates, for whom he acted; but even if it did not, it bound him; and he could not escape this liability,

or any part of it, by the voluntary agreement with his associates in 1888. As respects the second obligation, as we have seen, it bound Idler for 4,400 pesos to be paid from the first money collected on the claim which Idler was prosecuting, and this was represented by the judgment. The claim embraced the interests of Idler's associates as well as his own. The rights of Chataing under this obligation, as under the former, could not be affected by the agreement referred to.

BORGMEYER *vs.* IDLER.

1871, June 21.	Am't paid administrator....	$17,696 98		
	Less one-third.....	5,898 99		
		$11,797 99		
	Ten per cent. on $11,797.99 .	1,179 79		
	Pesos.... ..... 4,400 00			
	Less credits..... 1,512 24			
		2,887 76		
		$4,067 55		
	Int. on $4,067.55 from June 21, 1871 to Oct. 18, 1893			
28	(verdict).....	5,460 51		$9,528 06
1876, May 16.	Amount paid administrator.	$20,224 57		
	Less one-third	6,741 52		
		$13,483 05		
	Ten per cent. on $13,483.05 .	1,348 30		
	Int. on same from May 16, 1876, to Oct. 18, 1893.....	1,408 97		2,757 27
Oct. 15.	Amount paid	$48,374 60		
	Ten per cent. thereof.....	4,837 46		
	Int. thereon from Oct. 15, 1890, to Oct. 18, 1893.....	870 66		5,708 12
1892, Jan'y 23.	Amount of payment.....	$20,330 64		
	Ten per cent. thereof.....	2,033 06		
	Int. thereon from Jan'y 23, 1892, to Oct. 18, 1893	213 46		2,246 52
		$20,239 97		

"Opinion of the U. S. commissioner upon the claim of 'Jacob Idler, deceased,' (Sophia Idler, administratrix; William Idler, attorney; No. 1, as per secretary's list), submitted to the umpire, as per minutes of July 18, 1868.

"The undersigned, David M. Talmage, commissioner of the United States of America upon the mixed commission celebrated between the United States of America and the Republic of Venezuela, April 26th, 1866, admits the said claim for the full amount as presented before this commission, the same being founded in justice and upon which claim the legal tribunals of Venezuela uniformly, in every stage of Mr. Idler's suit before them, decided that the government of Venezuela was bound to pay him the amount claimed, as will fully appear by reference to data following, to wit:

By a reference to the expediente containing all the proceedings had and made in Mr. Idler's case before these authorities, it appears, first, that in the year 1817, Gen'l Bolivar, then the acknowledged supreme civil and military chief of Venezuela, ferwarded to Gen'l Lino de Clemente, at the time residing in the city of Philadelphia, in the United States, a commission as agent of Venezuela, with powers full and ample to make and negotiate for supplies or otherwise of whatever nature or kind (which, in said commission is acknowledged as obligatory and binding in the most sacred manner upon the government of Venezuela), and in the case of his (Clemente's) death or absence, then the same power and authority to devolve on Pedro Gual, at that time residing likewise in Philadelphia, under which power and authority and pledge so given Gen'l Lino de Clemente did enter into certain contracts for supplies therein named with Jacob Idler and associates.

29 That subsequently Gen'l Lino de Clemente left the United States, substituting by authority Manuel Torres as the agent of Venezuela, with the same powers in all matters of negotiation, contracts and supplies which had been previously given to and exercised by Gen'l Clemente, with the same preferences and pledges of the government of Venezuela, and with whom the said Idler continued his contracts and supplies up to the year 1821.

It would appear that the agents of Venezuela, General Clemente and Manuel Torres, under the powers of their commission (diploma) and instructions attached to the same did pledge all and singular the guarantees therein offered by the supreme civil and military chief, to wit, Barinas tobacco, cacas, coffee, indigo, in fact every production of the country, together with the privilege of discounting in payment in full all duties on imports and exports made by the contractors. Under which guarantee the said Idler and associates entered into the contracts with the agents of Venezuela, but which in various settlements made were withheld (particularly the "Barinas tobacco," which was exclusively the property of the government) under various pretexts from the said Idler and associates, and that, too, after the most sacred pledges given by the supreme chief, in the most trying, and I may say with truth, the most eventful period of the revolution.

The agents of Mr. Jacob Idler and associates then residing in

Venezuela, not having liquidated or settled in full the contracts made by them, induced them to send out a special agent from the United States in the person of William Duane, to adjust the balance and close the same, not doubting but an immediate arrangement would be made to liquidate and adjust the claims of the said Idler and associates against the government of Venezuela. In this it appears that he did not succeed. Another was sent out and he did not succeed. Mr. Idler, therefore, as principal, concluded to leave his large and helpless family of children and embark for Venezuela, that he might in person attempt the adjustment himself. He therefore presents himself before the authorities of Venezuela, and under a liquidation previously made in the office of the intendancy, acknowledged by the intendant, makes out his claim, admitted to proof by Gen. Lindo de Clemente, who declares the contracts made by himself and Manuel Torres under the powers given by the supreme chief, General Boliver, were concluded in their terms without the supervision of any other authority, and which contract should be paid in preference to all others, pledging the crop or crops of Barinas tobacco, and if not in that, in hard dollars.

In this state and upon the admitted and liquidated account of the intendant, Gen. Escalona, Mr. Idler brings his case before the then intendant, Mendoza, who, by his decree of the 28th of May, 1828, and signed by his assessor, Castillo, refers the whole matter in dispute between Mr. Idler and the government of Venezuela "to arbibrators," and for this purpose named Elias Mocatta and Vicente Aramburn, both of whom declined from a want of time to attend to the same. In the meanwhile, Gen. Briceno had been named intendant, who excused the previous arbitrators, and nominated with the consent of his assessor, Duarte, Jose M. Rojas and Francisco Amaritique in this place.

In this situation a discordia takes place with the treasury, and Mr. Idler through his attorney asks that in case a disagreement should occur in the adjustment of the accounts and claims of said Idler with and upon the treasury, that he should be privileged to nominate a third person to examine entirely and thoroughly all and every account contract, contract payments, liquidations, or settlements, and for this purpose Mr. G. B. Sprotto was named, a respectable and intelligent merchant, and well known as such to the authorities. This nomination was acceded to by the intendant, Mr. Lecuna, and the assessor, Duarte, and the same admitted by the treasurers, Lecuna and Smith.

Mr. Sprotto accordingly examined the accounts entire, from beginning to end, and finally rendered a balance against the government of Venezuela in favor of Mr. Idler of $72,346.34 *dollars*, which is confirmed in an able and lucid illustration of the case by the fiscal lawyer, the legal defender of the rights of the State.

In which situation the case goes before the judge of letters of the treasury, juez letrado de haciendo, who in a very distinguished and able manner argues the case, and confirms the liquidation made by Sprotto, and the decision of the fiscal, and refers the matter in consultation (consulta) to the superior court of justice, allowing

both parties, the State and Mr. Idler, the legal time for taking an appeal.

In consultation the superior court revoked the sentence, not on the justice or principle of the case, but on the grounds of some errors having been made in the liquidation in dr. and credit made by Mr. Sprotto, and that the general treasury, with the knowledge of Mr. Idler, should nominate another person to examine into the settlement made by Mr. Sprotto who was about absenting himself from the country.

The supreme court in the appeal of Nulidad (recurso de Nulidad) had in this state of the case, refers the case back again to the superior court, who finally by their decree nominate Juan Silva to examine the statement made by Sprotto.

Mr. Idler accuses Mr. Silva; the superior court admits the accusation, and nominates thereafter Jose Ventura Santana for the same purpose, who accepts the same, but subsequently renounces the appointment, which is admitted by the court.

The supreme court then nominates Jose Cadenas, who accepts, and after a most minute and laborious examination into every account and contract and settlement made one by one and the general liquidation made by Mr. Sprotto, and the objections to the same made by the treasury, in a most able, intelligent, and independent manner, decides and establishes, "by the documents in the liquidation," that the government of Venezuela is indebted to Mr. Jacob Idler in the sum of $70,520.11½ "hard dollars," with interest from the 30th of June, 1825, until paid.

31 The attorney general of the State, the fiscal, asserts and confirms this liquidation, and the judge of letters of the treasury (juez letrado de hacienda) confirms it as follows, "que los fondos publicos sen responsable al Senor Jacob Idler de la cita cantidad de setenta mil quimentos pesos dice y medio centavos fuertes que seran satisfechos en el modo v terminos que dispenga el Supremo Gobierno á quien ocania el interesado con testimonio que se le dara delo que sea conducento á la classificacion del credito y order de págo; consultase antes ésta determinacion con su Excelencia la Coste Suprema de Justicia remitiendosele al ejecto los antos originales, y satisfaciendo el Senor Idler, todas las costas causadas y que causaren."

This decision as above is referred in consultation to the superior court, who confirms that decision of the judge of letters (juez letrado de hacienda).

The documents are again produced to the "juez letrado de hacienda," who, according to his previous decree and the approval of the superior court as above in consultation and the sanction of the attorney general (fiscal), orders the execution of said sentence.

Mr. Jacob Idler, in this state of his business, having established clearly and unequivocally his claims by the laws of Venezuela, appeals to his excellency, the president, for the payment of the amount adjudicated to be due to him by the courts of the country.

To which he is answered by the secretary of exterior relations and secretary of hacienda: 1st. That the judge of letters of the

treasury (juez letrado de hacienda) had no power in the case. 2d. That the contracts were made by agents of the executive. 3d. That in controversies of this kind the supreme court of justice could only take cognizance of the case according to Art. 147, attribution 5, of the constitution, and disowns the authority of the judge of letters of the treasury (juez letrado de hacienda) to declare Mr. Jacob Idler a creditor of the State for reasons of the contracts, and resolving that the government will take notice, hear and examine the accounts when the divisions that heretobefore composed Colombia shall take into consideration the public debt, &c., &c.

In this situation the case is again brought before the attorney general (fiscal), who clearly establishes by argument and law his power and authority, as such constitutionally and legally, and the nullity of the opinions of the secretary of exterior relations and treasury in all cases in which the State is interested, which is confirmed by the supreme court and again confirmed by the judge of letters of the treasury (juez letrado de hacienda) that the government of Venezuela was indebted to Mr. Idler in the sum reported to be due by Mr. Jose Cadenas of $70,520.11½ hard dollars, with interest from the 30th June, 1825, until paid.

When these decisions are brought again before the secretary of exterior relations and treasury the case is referred in consultation with the council of government (consultase el consejo de gobierno).

32 The council of government after the decisions of all the courts of justice, and admitting the lawsuit of Mr. Idler by the authorities of the government in such cases, and defending it through all its stages with a most determined hostility, creating heavy expenses, opposing the claim of Mr. Idler at every step, and by all means which persons in authority can use against a private individual, but which, fortunately for Mr. Idler, he sustained in a most triumphant manner, and at every step gains decisions after decisions in his favor, both by the authorities appointed in such cases to overlook and defend the rights of the State, as well as the legal and independent courts of the country, until finally an appeal is made to the executive for payment of his established claim when he declares in consultation (with the council of government), "por las razones y fundamentis legales de la precedente consulta de consojo de gobierno se declare que mo ha lugar a la solicitud de Jacob Idler. Por S. E. El Preidente de la Republico Michelena."

Mr. Idler again makes a memorial to his excellency, the president, the 18th December, 1832, asking payment for the sum adjudicated to be due him, and handing a decree of supreme court in the case of Vicente Michelena, Brothers Michelena & Co., claiming payment of Venezuela (not Colombia) for a bill of exchange drawn by the government of Colombia in favor of Mr. Idler and endorsed by him to the Michelenas, which is ordered by the attorney general (fiscal) to be paid (and confirmed by the supreme court) by the government of Venezuela, and which was accordingly paid.

Mr. Jacob Idler again memorializes his excellency, the president, in two instances without receiving an answer.

The attorney general (the fiscal) presents the case to his excellency the president, and asks its adjustment and reference to the supreme court (according to the opinion of the secretary of exterior relations and treasury), who declares having once decided the case, and admitted and adjudged on the justice of the claim of Mr. Idler, it is therefore concluded legally and definitely by the tribunal.

By all of which facts above recited "to be found upon the pages (indicated) in the expediente," it is clearly proven by the decisions of all the courts of Venezuela that the said claim of Jacob Idler is established and admitted, and has been due and owing to the said Idler "by the government of Venezuela" since June 30, 1825, and the undersigned can only be astonished how any equivocation could arise in its adjustment by these authorities, and how the payment should have been evaded and resisted to this late day.

In all civilized countries (especially republican in form) the decisions of the legal tribunal are respected and obligatory, not only upon the citizen but the government; however, it appears that here under a written constitution, under admitted rights of equality and justice, the decisions of the courts of justice, "the highest tribunals" known, are subject to nullity by a power which I cannot conceive given or granted in any part of the constitution or laws to a
33 co-ordinate part of the government. To acknowledge the existence of such a power would in its effects control and subvert the liberty of freedom and justice. There is no power reposing in the government of Venezuela competent to declare the decisions of its highest tribunals illegal, much less to deny to a citizen of the United States his rights under and by virtue of such decisions and the mandates of international law.

The claim of Jacob Idler has all the authority and sanction of law for its support, notwithstanding which he is denied even that sympathy which a struggling nation, owes for the supplies furnished by him in the hour of her direst extremity, and but for which she might never have achieved her independence.

It should be observed in this connection that there is a strange contradistinction connected with the case of Mr. Idler and the parallel one of Vicente Michelena for Brothers Michelena & Co., referred to above. The final decisions of the tribunals in this case of Idler (but denied by Mr. Santos Michelena, secretary of hacienda (treasury), one of the firm of Michelena Brothers), is the ground on which Vicente Michelena as aforesaid, brings an action against Venezuela to pay a bill of exchange drawn by the government of Colombia on England in favor of Mr. Idler and endorsed by Santos Micheleno, which bill was returned protested, and which according to the memorial of Vicente Michelena has been paid in full with all the damages and costs by Venezuela, and that, too, after the said Santos Michelena had declared as secretary of the treasury (hacienda), Mr. Idler should wait a settlement of the affairs between the separate parts of Colombia before his claim could be adjusted.

I forbear to make any remarks on this affair, leaving it to the Venezuelan authorities to reconcile, if they can, the justice of this

settlement with the Michelenas, with the refusal of justice to an actual parallel in the case of Mr. Idler.

It has been attempted to palliate the evasion and resistance of Venezuela to the payment of this just claim with the old "subterfuge" of "*restitutio in integrum*" against verdicts rendered, without remembering that that Venezuelan republican code from its birth abolished all the laws and practice of the old regime which were at variance with the spirit of legal equality which constitutes the basis of her institutions; and that as a consequence "the laws specially applicable to judicial proceedings in Venezuela have always, since the emancipation of the Republic, laid down the prohibition of opening judicial lapses after their fulfilment, through restitution or any other motive whatsoever, that in accordance with the fundamental principles of the Republic, the civil code does not admit of recourse to restitution or nullification of acts of minors or incapables where the necessary formalities for their validity have been observed." And finally, that by an appeal to that method of "restitution" the dignity of both the courts and the State is assailed, by supposing that a nation able to bring to a happy conclusion the gigantic struggle for its independence has become so weak, an imbecile incapable of defending itself in a civil suit before its own magistrates.

34 Again, Idler's contracts having been arranged and executed with the agent of Venezuela in the United States, it would be a violation of the principles of international law to pretend or to contend that special privileges never known in North America jurisprudence should be brought to bear in the questions which have arisen from these contracts, and it must be borne in mind that it would be against the principles of the "rights of nations," to oblige Idler (who was not only a stranger in Venezuela, but who never acquired any sort of residence therein) to follow up in said country suits or restitution or of any other kind in which it were intended that he should act the part of defendant.

Further. This indebtedness was contracted by Venezuela solely, previous to her confederation with Colombia, and for a period of eight years subjected to the liquidations and decisions of her own tribunals, &c., and by them definitely determined and consequently could not by any possible legal construction or color of justice be considered within the promise of, or subject to the jurisdiction of any commission growing out of the subsequent confederation or conventions or treaty stipulations as between the parties to such confederation, and such the decision at one time of the government of Venezuela herself considering it her pleasure and sole privilege to contest and conclude this matter with Idler.

All action on the part of Venezuela since 1833 (when this case was declared by the highest tribunal finally determined and concluded) in evading and resisting payment to Idler is mere subterfuge, and the means resorted to not only illegal (by its own constitution), but without precedents in jurisprudence, and cannot be recognized or considered by the undersigned, save to ignore and condemn the same as unworthy the resort of an individual, much

less a government founded upon the broad basis of equality and justice and assuming to administer the same.

In view of all the facts of the case and the final judgment and decision (before referred to) of the highest tribunals known in the land, is established beyond controversy or appeal the irrevocable right acquired by Idler to be recognized as a creditor to Venezuela for the full amount of his claim, and in accord therewith I do adjudge and determine the heirs of Jacob Idler, deceased, entitled to the sum of three hundred and twenty-five thousand six hundred and twenty-five $\frac{54}{100}$ hard dollars as an award made in adjustment of said claim of heirs of Jacob Idler, deceased, and justly owing and to be paid by the government of Venezuela, as per my rendering subjoined.

Amount of final liquidation with interest to date of confirmation of same by the sentence of the supreme court, Oct. 30, 1833	$105,780 17
Add interest on above amount at rate of six per cent. per annum, from Oct. 30, 1833, to date, June 20, 1868	219,845 37
Sum total	$325,625 54

35 The above amount now due the heirs of Jacob Idler, deceased, by the government of Venezuela, S. A.

(Signed) DAVID M. TALMAGE,
United States Commissioner.

ALFRED ALDERSON,
Secretary of Mixed Commission.

"*Decision of the Umpire upon the Claim of 'Heirs of Jacob Idler.'*"

(No. 1.)

Translation.

CARACAS, *August* 1, 1868.

Gentlemen of the mixed commission of the U. S. of Venezuela and N. America:

The "Idler" claim being submitted to me as umpire on account of the difference of opinions that has arisen between the commissioners, I have examined all the papers relating to it, and it is with the fear of committing an error that I proceed to give my opinion on this delicate question and to pronounce the verdict required of me.

I shall not enter into the history of the lengthy course through which this affair has run, the origin of which goes *as* back as far as 1817, in which year the liberator authorized Gen'l Clemente to contract in North America for the supply of war materials wherewith to uphold the independence of Venezuela. One of the North

American contractors, Jacob Idler, carried into effect an extensive contract of these articles of war; and it is a fact that the tribunals of the Republic, by verdicts given on the 18th of September and the 1st of December, 1832, acknowledged Idler to be a creditor of the State for seventy thousand five hundred and twenty dollars eleven and a half cents. These verdicts having been argued upon as null, they were reconsidered by the supreme court, which repelled the invalidity attempted to be shown, and by its verdict of the 6th of December, 1833, declared the suit to be completely concluded and done with. The executive government of Venezuela thought that the tribunals of the Republic had acted with precipitancy without a detailed acquaintance of the facts and transactions in question, and through its influence prevailed upon the supreme court to order the restitution *in integrum* regarding the matter, taking for its authority an old Spanish law, 1 P, title 19, partida 6th, which puts the State on the same footing as a minor, for the purpose of by these means obtaining the revision of those final decisions.' The North American legation invariably opposed itself to such proceedings, and considers the suit as completely concluded.

The undersigned considering, 1st, that the bringing back these questions to the state they were in previous to the courts of Venezuela taking cognizance of them would necessitate anew a strict settlement of the respective claims, thus incurring serious
36 difficulties arising from the antiquity of those transactions and accounts which would have to be examined. 2d, that this appeal to restitution (to which the government of Venezuela has manifested a dislike,) if it was not undivested of some support in law, has at least become so unpopular as to have fallen into its present state of explicit reprobation. 3d, that, the convention of the 25th of April, 1866, opens the way to an equitable decision which can reconcile conflicting pretensions as far as possible, I judge and decide that the before-mentioned $70,520.11½ hard dollars be acknowledged in favor of the heirs of Jacob Idler, and moreover, one hundred and eighty-two thousand two hundred and ninety-four hard dollars as interest; the amount of the claim being two hundred and fifty-two thousand eight hundred and fourteen hard dollars.

So I decide.

I am your obedient servant,

(Signed) J. N. MACHADO, JR.

ALFRED ALDERSON,
Secretary Mixed Commission.

Circuit Court of the United States, Eastern District of Pennsylvania

CHARLES L. BORGMEYER, Administrator of Alexander Chataing, Deceased,
vs.
WILLIAM IDLER and JOHN W. HAZELTINE, Administrator-, &c.
} No. 1. Oct. Sess., 1892.

And now, this sixth day of March, A. D. 1894, comes S. F. Phillips, F. D. McKenney and Henry R. Edmunds, attorneys for plaintiff and remit the sum of seven thousand four hundred and thirty-two $\frac{33}{100}$ dollars ($7,432.33) of the verdict in the above case and moved for judgment for the balance thereof, to wit, the sum of twenty thousand two hundred and thirty-nine $\frac{97}{100}$ dollars ($20,239.97) as of October 18th, 1893, with interest and costs.

Whereupon judgment is entered in favor of plaintiff and against the defendants for the sum of twenty thousand two hundred and thirty-nine $\frac{97}{100}$ dollars with interest from October 18th, 1893.

Endorsed: 1. Oct. sess., 1894. C. C. U. S. Borgmeyer, adm's., &c., *vs.* William Idler *et al.*, adm. Remittitur and motion for judg't and order entering judgment. Filed Mar. 6, 1894. Samuel Bell, clerk.

37 Circuit Court of the United States, Eastern District of Pennsylvania.

CHARLES BORGMEYER, a Citizen of the State of New Jersey, Administrator of the Estate of Alexander Chataing, Deceased,
vs.
WILLIAM IDLER and JOHN W. HAZELTINE, Citizens of the State of Pennsylvania, Administrators *de bonis non* of the Estate of Jacob Idler, Deceased.
} Of October Sessions, 1892. No. 1.

Be it remembered, that in the said session of October, 1892, No. 1, came the said plaintiff into the said court, and impleaded the said defendant in a certain statement of assumpsit, &c., in which the said plaintiff declared (*pro ut* statement) and the said defendants pleaded (*pro ut* pleas). And thereupon issue was joined between them.

And afterwards, to wit, at a session of said court, held at the county aforesaid before the Honorable William Butler, judge of the said court, the twelfth day of October, 1893, the aforesaid issue between the said parties came to be tried by a jury of the said county for that purpose duly empannelled (*pro ut* list of jurors), at which day came as well the said plaintiff as the said defendants, by their respective attorneys; and the jurors of the jury aforesaid impannelled to try the said issue, being called, came, and were then and there in due manner chosen and sworn or affirmed, to try the said issue; and upon the trial.

C. C. U. S., E. D. of Pa.

CHARLES J. BORGMEYER, Adm's, &c.,
vs.
WILLIAM IDLER and JOHN W. HAZELTINE, Administrator-. } No. 1. Oct. Sess., 1892.

Butler, J.

THURSDAY, *October* 12, 1893.

Mr. Edmunds and Mr. Phillips for plaintiff; Mr. Todd, Mr. Weil and Mr. Lyle for defendants.

Plaintiff's counsel offer in evidence the letters of administration on the estate of Alexander Chataing, granted by the register of wills of Philadelphia county on September 14, 1892, to Charles Borgmeyer, plaintiff (*pro ut* same).

38 Counsel for plaintiff also offer in evidence contract dated September 25, 1832, between Jacob Idler and Alexander Chataing.

(*Pro ut* same.)

(Objected to.)

Mr. EDMUNDS: I will then offer the admission under oath of William Idler that the signature to that contract is his father's.

The COURT: There is no doubt that it is held that the rule requiring notice to prove the execution of the paper sued on is not applicable in cases where the defendant is a legal representative and therefore cannot know the facts; but it is decided by the supreme court of this State, and that very recently, that under our new and peculiar method of pleading by which the plaintiff is required to set out his cause of action with all that is necessary to show his right to recover, whatever allegation thus made — is not denied by the defendant is admitted. Whether that should apply to a case like this you can judge. If I were called upon to decide it I would hold that it did, but nevertheless you are liable to review, and if you choose to take the risk I will admit the contract.

(Exception by defendants.)

Plaintiff's counsel here reads in evidence the contract dated September 25, 1832, between Jacob Idler and Alexander Chataing, referred to.

(*Pro ut* same.)

The COURT: I wish to say here that the rule of court, as I said before, is not applicable in a suit like this against a legal representative, but the court admits this paper on the ground that the pleadings here concede that the paper was duly executed, that the plaintiff's statement so avers and the defendants' statement does not deny it or call for proof. Of course the administrators could not be expected to say that it was not duly executed, they do not know, but they could say they were not informed on that subject.

Plaintiff's counsel next reads in evidence contract dated January 9, 1833. (*Pro ut* same.)

Also copy of award of commission July 14, 1890, claim of Jacob Idler *vs.* The United States of Venezuela.

(Objected to.) (*Pro ut* same.)

It is agreed that a book entitled "United States and Venezuela Claims Commissions, &c.," together with the copy of the award of the commission may be put in evidence on behalf of plaintiff. (*Pro ut* same.)

The COURT: This award is offered, and of course it must be accompanied with the authority for making it.

Mr. EDMUNDS: We offer the award stating that a certain sum of money was awarded this man on account of his claim against Venezuela and that he received the money.

The COURT: You have offered this award without the court knowing anything about what followed.

Mr. EDMUNDS: We offer in evidence the whole of this book.

39 The COURT: It is in evidence by agreement. The award may go in with this paper, connected with the offer to prove that these defendants as administrators received the amount of the award for the purposes stated.

Mr. EDMUNDS: We offer these papers to show that an award of a certain sum of money has been made.

Mr. PHILLIPS: This book also contains the opinion of Mr. Little, the chief of the commission, giving the whole history of the case, and it is for that purpose also that it is offered.

(The copy of the award of the commission referred to is marked "Ex. A. Oct. 12, '92.")

Plaintiff's counsel next offer in evidence certified copy of memorandum from the State Department at Washington duly certified, showing how much of said award has been paid to defendant, and when, dated October 11, 1893, reading same. (*Pro ut* same.)

It is admitted that Alexander Chataing died somewhere in the latter part of August or the first part of September, 1836, at Caracas, Venezuela.

Plaintiff rests.

Defendants' Evidence.

Defendants' counsel offer in evidence the petition and exhibits in the claim of William Idler and John W. Hazeltine, administrators *d. b. n.* of Jacob Idler, deceased, against the United States of Venezuela. (*Pro ut* same.)

Also the report of the secretary of the commission to the Honorable John Little, chairman of the commission, dated September 10, 1890, giving a detailed account of all the claims, including the Idler claim, before both commissions, showing the amounts of payments made and the amounts of the respective awards and to whom, directing special attention to the statement on page 16 thereof, entitled "Statement D, schedule of awards rendered by the United States and Venezuela Claims Commission under treaty of December 5, 1885," &c. (*Pro ut* same.)

WILLIAM IDLER, having been duly sworn, was examined as follows:

By Mr. WEIL:

Q. You are one of the defendants in this suit?
A. Yes, sir.
Q. When were you born?
A. June 25, 1808. I was eighty-five years of age last June.
Q. Where do you reside?
A. 109 South Eleventh street, Philadelphia.
Q. Did you know Alexander Chataing in his lifetime?
A. Yes, sir.
40 Q. Where did he reside?
A. In Caracas, South America.
Q. When did you first hear of Alexander Chataing's death, and how?
A. September 1, 1836.
Q. How did you hear it?
A. By letter from Mr. Strom of Laguayra.
Q. At the time you learned of Chataing's death where were you living?
A. In Philadelphia.
Q. With whom were you living?
A. With my father, Jacob Idler.
Q. How long did you continue to live with your father in Philadelphia?
A. A long time.
Q. Up to what time?
A. From 1836 to 1846 we were together; he either lived with me or I lived with him all the time.
Q. What time did your father die?
A. Father died May 26, 1856, I think was the date.
Q. When your father came back from South America did he live with you or did you live with him?
A. I lived with him. We came together from South America. We arrived in Philadelphia in 1833; I think it was in June, 1833.
Q. Are you aware of the fact that at the time of Alexander Chataing's death and since your father was prosecuting a claim against the government of Venezuela?
A. My father and his associates. I was constantly employed writing memorial letters to the President, the Secretary of State and the minister to South America.
Q. Name who these associates in the claim were.
A. The associates were Bogart and Kneeland, Benson and Alcorn (?), Thaddeus Philips and Mr. Newman of Baltimore—Hammond & Newman of Baltimore.
Q. Where did most of these associates reside?
A. In New York, principally.
Q. At the time of your father's death who was appointed as administrator of his estate?
A. My mother.

Q. How long did she live after your father's death?

A. About ten or twelve years, I think; up to 1868.

Q. From the time of the appointment of your mother as administrator of your father's estate did you or did you not act as her agent or attorney?

A. Yes, I acted as her agent. I was then the only person living that knew anything about the claim.

Q. On the death of your mother, some twelve years or thereabouts after your father's death, who were appointed administrators of your father's estate?

A. John M. Hazeltine and myself as administrators *de bonis non.*

Q. Mr. Hazeltine, I believe is your son-in-law?

A. Yes, sir.

41 Q. When were you appointed administrators, if you recollect?

A. In 1868.

Q. From the time you were appointed administrator, or, I may say, from the *the* time of your father's death, was this claim against Venezuela prosecuted by you and the other administrators?

(Objected to as leading.)

Q. State in a general way what you did from the time of your father's death in 1856 down to the time the commission sat in Washington?

(Objected to. Objection sustained.)

By Mr. TODD:

Q. Did Chataing or his representatives present any claim to that tribunal?

(Objected to. Objection sustained.)

Mr. WEIL: We now propose to show by the witness that no claim of any sort was made to the administrators up to the year 1892.

Mr. EDMUNDS: That is admitted.

The COURT: You may ask him whether any claim was ever made.

By Mr. WEIL:

Q. Was any claim ever made to your father in his lifetime after the death of Chataing, or to your mother or yourself as administrators, as far as you know, up to the year 1892?

A. None whatever.

Q. Have you filed your accounts in the orphans' court of the moneys you have received as administrator?

A. Yes, sir.

Q. And has distribution been made?

A. And distribution made by the court to the different heirs.

Q. Was any claim ever preferred before the orphans' court on the distribution of this fund that you received by anybody on behalf of Alexander Chataing at the different accounts which you filed?

A. No, sir.

Q. You say you assisted your father when he was in Venezuela and after his return to the United States?

A. Yes, sir. The government of Venezuela commenced suit against my father in May, 1829. I assisted my father from that time until he left in 1833. I did all his writing pretty much.

By the COURT:

Q. Were you and your father living in South America?

A. Yes, sir.

Q. How long?

A. He went there in 1823, and I went the year after.

Q. Then you were living there at the time the goods out of which this claim arose were furnished?

A. They were furnished in 1822. They were furnished by my father and associates.

42 Q. In Philadelphia, or down there?

A. No, they were shipped from New York and Philadelphia.

Q. Where were you living then?

A. Father and I were living then in the city.

Q. That was what year?

A. That was in 1821.

Q. Then you went to South America to live when?

A. In 1824, I think. My father went in 1823, and I went in 1824.

Q. Then you came back in what year?

A. In 1833; I arrived here in June, 1833.

By Mr. WEIL:

Q. I am asking you whether you had control of your father's papers during his lifetime?

A. Yes, sir, I was the only one that knew anything about his papers. It took me many years to arrange them.

Q. Were those papers in existence at the death of Alexander Chataing, and did they continue in your father's possession up to the time of his death, and from his death have they continued in your possession as administrator up to the present time?

A. Yes, sir.

Mr. WEIL: These are letters of Alexander Chataing ordering goods to be shipped to him by Idler, showing payments that were made and accounts placed by Idler in Chataing's hands, my object being to prove that these papers are more than thirty years old, that they were found in the custody of the decedent and they prove themselves. My object is to prove literal payment of these 4,400 pesos. We do not admit that Chataing ever contended he was entitled to ten per cent.

(Mr. Weil here produces letters dated November 20, 1833, May 15, 1833, June 6, 1834.) (*Pro ut* same.)

(Letter dated September 1, 1836, shown witness.) (*Pro ut* same.)

Q. Is this the letter you received notifying you of the death of Chataing?

A. Yes, sir.

(Mr. Weil further produces letters dated July 17, 1836, November 11, 1835, May 20, 1834, and June 7, 1834.) (*Pro ut* same.)

(The foregoing letters produced by Mr. Weil are admitted in evidence.)

By Mr. WEIL:

Q. You have read those letters?

A. Yes, sir.

Q. When were those letters from Chataing asking for shipment of goods to him received? Are you familiar with Alexander Chataing's handwriting?

A. Certainly.

Q. Have you examined all these letters? Look at the signatures.

A. Yes, sir, these are all Chataing's signatures.

43 Q. And do you also say the same thing as to that acknowledgment of his of the accounts left with him for collection? Is that his signature?

A. Yes, sir.

Q. Are you aware that on the calls for these different shipments of articles which Chataing requested your father to make these shipments were sent?

A. Certainly; I assisted him in buying them and shipping them.

Q. Do you know whether or not at the time of Chataing's death or thereabouts your father by these shipments had or had not paid the whole of these 4,400 pesos to Chataing?

A. I always believed it had been paid.

Q. Do you know the fact from these shipments?

(Objected to.)

The COURT: Ask him if he knows what the shipments amounted to.

By Mr. WEIL:

Q. Do you know what the shipments amounted to?

A. In the neighborhood of $4,000.

Q. You are acquainted with the value of the pesos?

A. Yes, sir.

Q. What were 4,400 pesos worth in American money at that time?

A. $4,000.

Q. And you say the goods and payments amounted to $4,000?

(Objected to; the letters show for themselves.)

Q. You say you are fully familiar with all the steps taken in the prosecution of this case from the death of Alexander Chataing in 1836 down to 1890 or 1891?

A. Yes, sir.

Q. In a general way were you or not compelled to make large outlays and contracts for the prosecution of this claim?

A. Yes, sir; my father and his associates from the time of Chataing's death up to the time when Cornell was appointed in 1846 as their agent, spent a vast amount of money presenting petitions and writings to the Secretary of State, the President, and Congress until they got tired of it, and when Cornell was appointed their agent, from 1846 to 1859, I gave him all instructions from father's death to his death. He was a man of high reputation, a man who had collected claims and a competent man and I selected him on that account.

Q. You agreed to give him compensation?

A. I agreed to give him 25 and 50 per cent.

Q. Then after it was in Cornell's hands it was before committees of Congress?

A. A great number. We did everything we could.

Q. Were you compelled when you got the award in 1868 to employ attorneys in order to sustain the award before the Committee on Foreign Relations?

A. That was the hardest time, involving large expenditures, and in fact a number of attorneys. (Naming same.)

44 Q. And besides Mr. Kennedy and myself appearing in Washington you were compelled to employ a Spanish lawyer?

A. Yes, sir.

Cross-examined.

By Mr. EDMUNDS:

Q. It is because of these shipments mentioned in these letters and papers that you have here and which have been presented in evidence that you say your father paid the 4,400 pesos? Is that right?

A. Yes, sir.

Q. That is the reason why you so allege?

A. Yes.

By the COURT:

Q. Was there anything paid by this gentleman, on account of the shipments, to your father?

A. No, he never paid anything. We never heard anything of it.

By Mr. EDMUNDS:

Q. These papers and documents which Mr. Weil showed you and of which you recognize the signatures are the papers on which you now base your testimony that your father paid those 4,400 pesos? Am I right about that?

A. That is a portion of them.

Q. Are there any others extant anywheres?

A. I think Mr. Weil has more.

(Mr. Edmunds calls upon Mr. Weil to produce the papers referred to, to which Mr. Weil replies that he has handed Mr. Edmunds all the papers he knows or had charge of.)

The WITNESS: Those are the principal ones.

By Mr. EDMUNDS:

Q. There are other papers and Mr. Weil has them, you say?
A. Yes, sir.
Q. Now you say Chataing never paid for any of the articles which were forwarded by you to him to be sold in Caracas? Am I right about that?
A. They were shipped by my father.
Q. None of them were ever paid for?
A. None of them were ever paid for.
Q. Were any of them turned over by your order or the order of your father to some one else after Chataing's death?
A. No, sir.
Q. Did Chataing ever ship your father anything?
A. No, sir.
Q. You are certain of that?
A. I am certain of that.
45 Q. Who is William Idler?
A. That is myself.

(Letter from William Idler to Senora Chataing dated October 3, 1836, shown witness.) (*Pro ut* same.)

Q. That is your handwriting, is it?
A. Yes, sir.
Q. You wrote that letter, did you?
A. Yes, sir.
Q. Did you or your father ever receive from Chataing any coffee?
A. No, sir.
Q. Did you ever ask for any?
A. No; we never asked for any. There is nothing on the record that I know of.

(Letter from William Idler to Alexander Chataing dated August 20, 1836, shown witness.) (*Pro ut* same.)

Q. That is also your handwriting?
A. Yes, sir.
Q. (Contract in suit shown witness.) Is this your father's signature? (*Pro ut* same.)
A. Yes, sir.
Q. You are familiar with your father's signature?
A. Yes, sir.
Q. And you often saw him write?
A. Yes, sir.

(Letter from Jacob Idler to Alexander Chataing dated September 24, 1831, shown witness.) (*Pro ut* same.)

Q. Is not that your father's signature?
A. Yes, sir.
Q. In whose handwriting is the body of the letter?
A. Mine.

(Letter to Jacob Idler, Philadelphia, without signature, dated Caracas, April 20, 1826, shown witness.) (*Pro ut* same.)

Q. This letter which I now show you is directed to your father and it does not appear to be signed.
A. I don't know anything about it, nor the handwriting either.

(Letter from Jacob Idler to Alexander Chataing and Dr. Ignatio Dias, dated Philadelphia, May 24, 1836, shown witness.) (*Pro ut* same.)

Q. The signature of this letter is in the handwriting of your father?
A. Yes, sir.
Q. And the body of the letter is written by you?
A. Yes, sir.

(Letter from Jacob Idler to Alexander Chataing dated May 28, 1836, shown witness.) (*Pro ut* same.)

Q. That is a letter signed by your father, is it not?
A. Yes, sir.
46 Q. And the body of the letter is in your handwriting?
A. Yes, sir.

(Letter from Jacob Idler to Alexander Chataing and Ignatio Dias dated Philadelphia, June 17, 1836, shown witness.) (*Pro ut* same.)

Q. This letter which I now show you is in your handwriting?
A. Yes, sir.
Q. And that is your father's signature?
A. Yes, sir.

(Letter from Jacob Idler to Alexander Chataing dated August 20, 1836, shown witness.) (*Pro ut* same.)

Q. That is in your handwriting?
A. Yes, sir.
Q. And the signature is your father's?
A. Yes, sir.

Mr. Edmunds offers in evidence on behalf of plaintiff certified copies of letters from Jacob Idler and others to G. A. Williamson, Caracas, dated January 5, 1837 and October 7, 1836. (*Pro ut* same.)

(Adjourned until Monday, October 16, 1893,) at 10 o'clock a. m.

C. C. U. S. Butler, J.

CHARLES J. BORGEMEYER, Adm'r, &c.,
vs.
WM. IDLER and JOHN W. HAZELTINE, Administrators.

MONDAY, *October* 16, 1893.

Mr. Edmunds and Mr. Phillips, for plaintiff;
Mr. Todd, Mr. Weil and Mr. Lyle, for defendants.

Cross-examination of WILLIAM IDLER resumed.

(Paper produced by plaintiff shown witness and his attention called to certain lead-pencil marks thereon.) (*Pro ut* same.)

By Mr. EDMUNDS:

Q. Do you know the handwriting of the lead-pencil marks?
A. It must be my father's. The body of the letter is by me and the lead-pencil marks, I think, by my father.
Q. When did you personally leave Caracas?
A. My father and myself left Caracas in June, 1833.
Q. Do you remember what day in June?
A. No.
Q. Do you remember whether it was the early part of June or the latter part of June?
A. It was the early part of June, I think.
47 Q. Chataing himself of course remained in Caracas?
A. Yes, sir.
Q. He was a citizen of Venezuela?
A. He was a citizen of Caracas.
Q. And he died there, did he not?
A. Yes, sir.
Q. You are still one of the administrators of your father's estate, are you not?
A. Yes, sir.
Q. You have not been discharged?
A. No, sir.
Q. And the balance of the award made by the commission has not yet been paid you?
A. No.
Q. You expect to receive it, however, when it comes?
A. No, I think not. Venezuela, I think, delayed the payment.
Q. But it is still due?
A. It is still due.

Re-examined.

By Mr. WEIL:

Q. Mr. Edmunds asked you on Thursday when you were cross-examined by him whether your knowledge on the subject of the payment of this debt of 4,400 pesos was derived from these letters which he produced. I did not understand your answer fully, and

I would like it now to be given whether your knowledge of the payment of the 4,400 pesos is derived merely from those letters that were produced here on Thursday?

(Objected to.)

The COURT: I did not understand him to say he had any knowledge of these payments.

(Question withdrawn.)

By Mr. WEIL:

Q. Have you any knowledge of the fact that this debt of 4,400 pesos was paid, irrespective of the letters that were produced here on Thursday last?

(Objected to.)

The COURT: It is certainly not anything that grows out of the cross-examination. If he has any knowledge you may bring it out.

By Mr. WEIL:

Q. Have you any knowledge of the payment of this debt of 4,400 pesos, or any part of it, outside of the statements or acknowledgments contained in these letters?

A. After sixty years' examination and care looking over those papers those are the papers I found. They have knowledge of the payments. There have been other payments and shipments made, but I have not been able to find those papers.

48 By the COURT:

Q. You know there were other shipments made?

A. Oh, yes. In 1877 those papers were brought to me.

By Mr. WEIL:

Q. Have you been able to find any other letters or papers from Chataing in reference to dealings in any way with your father after your father and you left Caracas except those which have been produced?

A. Those are all that I can find.

Q. Were there other papers or letters in existence?

A. Oh, yes; there were a great many shipments made.

Q. Were there other papers or letters from Chataing in reference to business transactions between your father and Chataing after you had left Caracas?

A. There were letters of acknowledgment of the receipt of the shipments.

Q. Have you been able to find them?

A. No, sir.

Q. Have you any knowledge of the fact whether a considerable number of your father's papers were lost or destroyed?

A. Oh, yes. Wagon-loads of papers were brought to me in 1857, which were stored in a cellar on the Ridge road. Those papers were brought to my place of business and it took myself and my two sons nearly three months to try and save the papers. We

couldn't save them; the majority of them we had to destroy, books and all.

Q. When was that?

A. That was in 1857.

Mr. EDMUNDS: We object to the opening of this subject of payment.

The COURT: It is a matter purely for the discretion of the court, but I think we have passed that now.

By Mr. WEIL:

Q. Look at this paper in Spanish which I show you and tell me who received it, and from whom, and when it was received. (*Pro ut* same.)

A. That is the original paper. I know it came direct from Chataing. There were a number of them sent to him.

Q. They came from Chataing to whom?

A. To my father.

Q. How?

A. Of course it came by vessel.

Q. About what year?

A. 1834, I think it was.

Q. This was received by vessel by your father from Chataing together with a number of other papers?

A. Yes, sir.

Q. Look at this printed paper which I show you and state what it is. (*Pro ut* same.)

A. It is a translation of the original.

49 Q. Made by whom?

A. By Carrera (?).

Q. Who caused it to be made and printed?

A. My father.

Q. About what year?

A. Soon after it was received.

(Letter dated August 30, 1836, shown witness.)

By Mr. TODD (*pro ut* same):

Q. That letter mentions shipments of certain articles to Chataing by you?

A. Yes, sir.

Q. State whether or not you ever received payment for them.

(Objected to.)

By the COURT:

Q. Did you ever receive payment for those shipments?

A. No, sir; that was a private shipment of my own.

By Mr. TODD:

Q. Who was Alexander Chataing? What was his business?

A. He was a merchant. He kept a hardware store and fancy articles.

Q. He was not one of the lawyers in the case, was he?
A. Oh, no; he assisted my father as much as he could.
Q. Dr. Diaz was the counsel employed in the case, was he not?
A. Dr. Ignacio Diaz was the lawyer.
Q. He was one of them?
A. He was one of the last lawyers. The first lawyer was Dr. Paul (?). He attended to business for years privately for my father.

Recross-examined.

By Mr. EDMUNDS:

Q. You spoke of other shipments. Do you know the dates of any of them?
A. No, I don't remember the dates exactly; but I am confident, because I assisted myself in the purchase of the goods and the shipping of them.
Q. And that is about what you know of it, that you assisted in purchasing goods and in the shipping of goods at certain times, the dates of which you do not remember?
A. I don't remember now.

By the COURT:

Q. Were they charged on your father's books?
A. My father kept no books in South America. All his business was on loose paper. That is the custom in that country.
50 Q. But in making shipments from here to there?
A. That was Philadelphia business. The books have all been destroyed.
Q. Do you know whether they were changed by your father in his books?
A. Certainly they were; yes, sir.
Q. Were all these shipments that you have been speaking of shipments from this country?
A. Yes, sir.
Q. And all charged on your father's books to him?
A. Yes, sir.
Q. Those books are destroyed?
A. They are destroyed. I can't find them. After the commission in Caracas decided in our favor we thought it was final; we paid no attention to saving any papers.

By Mr. EDMUNDS:

Q. Your father's commercial books are quite a different thing from your claim against the government of Venezuela. What became of them? Your father carried on business and must have kept commercial books?
A. He kept books in Philadelphia, but they have no reference at all to any South America business. I have them yet.
Q. And there is no charge in those books against Alexander Chataing at all?
A. No, there is nothing at all in any of them.

By the COURT:

Q. Then these goods that were shipped to him from Philadelphia were not entered in your father's books?
A. Not in his Philadelphia books.
Q. Were they entered in any books?
A. Yes, sir.
Q. What books?
A. He had an account. That has been lost and destroyed.
Q. An account book that contained what?
A. That contained the accounts with South America.
Q. And he did not enter those in the books of his business here?
A. No, sir, nothing at all.

By Mr. EDMUNDS:

Q. Then what did you mean awhile ago when you said that your father kept his business on slips of paper and not in books at all?
A. He kept no books in South America; he kept it in loose papers. He had one little memorandum book with an account on, but that has been destroyed or lost, I have not been able to find it.
Q. In point of fact this has been a long while ago, and your memory as to what occurred then is somewhat defective, is it not?
A. I think I recollect distinctly the shipments being made.
51 Q. What you do recollect is that certain articles of merchandise were sent by your father to Alexander Chataing, and when they were sent or what they were or the value of them you do not recollect?
A. No, sir.

Counsel for defendant- offer in evidence a document in Spanish signed "A. Chataing," dated Caracas, August 28, 1834, together with a translation of the same, being an address by Chataing on the subject of the Idler claim. (*Pro ut* same.)

Counsel for defendants also offer in evidence the letters, &c., identified by the witness. (*Pro ut* same.)

It is also considered that the treaties, petitions, letters, &c., in the case are in evidence. (*Pro ut* same.)

(Defendants close.)

Plaintiff's Rebuttal Evidence.

Counsel for plaintiff offer in evidence all the letters heretofore identified by the witness. (*Pro ut* same.)

Counsel for plaintiff state that they are prepared to admit a further credit on the 4,400 pesos of $440.56.

(Closed.)

C. C. U. S. Butler, J.

BORGMEYER, Adm'rs
vs.
IDLER and HAZELTINE, Admr-.

MONDAY, *October* 16, 1893.

The COURT: While I have very grave doubts whether the plaintiff has presented a case which entitles him to recover, independently of the objections made on account of lapse of time, I will nevertheless direct a verdict to be entered for the plaintiff, and will take the opportunity of reviewing the case in a motion for judgment for the defendant-, notwithstanding the verdict.

I have been looking at the defendants' points for the purpose of seeing whether or not there is any point on which I can reserve the case, and while the defendant- *has* eleven of them I am slightly in doubt whether there is any one on which I can reserve the question involved and principally discussed.

The points are as follows:

"1. That more than six years having elapsed before suit was brought since the right of action accrued on the loan or advance of 4,400 pesos as set forth in Exhibit "A" of plaintiff's statement, no recovery can be had in this action."

52 We cannot so charge under the decisions of the supreme court of this State, which govern us. The parties are subject to the laws of the State as respects all matters affecting the remedy.

"2. That more than twenty years having elapsed before suit was brought since the right of action accrued on the loan or advance of 4,400 pesos as set forth in Exhibit A of plaintiff's statement, the law presumes the same to have been paid and satisfied."

I must disaffirm this point. Inasmuch as there was no one to whom payment could be made there is no presumption of payment; it would be illogical to presume such payment with the fact before us that there was no one to whom payment could be made—administration not having been raised until very recently. The money was not due in the lifetime of the decedent and the statute did not therefore commence running until after his death.

"3. The statute of limitations and the presumption of payment in law arising from the lapse of time are both bars to any recovery by the plaintiff to this action on the demand under Exhibit B."

I cannot so charge. The point is disaffirmed.

"4. The construction of the contract for compensation is for the court. It was not in contemplation of the parties to the contract that Chataing should receive compensation for an award made by the international tribunal many years after his death, presented and prosecuted by other agents and attorneys. Venezuela having declined and refused payment there can be no recovery based on an award made in Caracas in 1868 or in Washington in 1890, and the verdict must therefore under all the evidence be for the defendant-."

I will reserve that point, it having been amended since I commenced so as to enable me to do so.

"5. The payments agreed to be made to Alexander Chataing for his services as set forth in Exhibit B of plaintiff's statement were contingent on Jacob Idler recovering satisfaction for his judgment against the government of Venezuela in said Exhibit B referred to."

I affirm that point.

"6. The undisputed evidence in the case is that no payments have been made by the government of Venezuela on account of the judgment rendered against it, and which is set forth in said Exhibit B of plaintiff's statement, and therefore the verdict should be for the defendant."

I will reserve that point also.

"7. The undisputed evidence in this case is that no payment has ever been made by the government of Venezuela on account of the original judgment or sentence of her court, and she has undoubtedly refused and resisted payment of it for more than fifty years, therefore no obligation to make payment has occurred under Exhibit B of plaintiff's statement and therefore the verdict should be for the defendant."

That point is reserved. This point was also amended since I commenced.

53 "8. The effect of the treaty between the Government of the United States and Venezuela on the Idler claim was to nullify and set aside the judgment referred to in Exhibit B, and remit the claimants to their original claim, subject to all just and equitable defenses."

This is reserved.

"9. The award in favor of Idler and his associates was made by an international commission administering justice and equity for supplies, &c., furnished to that government, and was a sentence or award after full examination of the merits of the claim, irrespective of the original sentence of the Venezuelan court."

I do not know that this point is important in view of the other just reserved. It is, however, reserved to be considered with those so treated.

"10. By the decree of *restitutio in integrum* the judgment in favor of Idler and his associates was annulled in Venezuela. More than fifty years afterwards an international tribunal made an award to those parties and the moneys they received were based on that award, and there can be no recovery in this suit."

That is reserved. It also has been amended since I commenced to charge.

"11. Under the terms of the treaties between the Government of the United States and Venezuela the claim of Alexander Chataing as set forth in Exhibit B, should have been presented to the mixed commission provided for in said treaties, and that not having been done the claim cannot be maintained in this action."

I disaffirm this.

"12. On the whole evidence the verdict should be for the defendant."

This is reserved, it also having been added since I commenced.

Counsel for defendants except to the refusal by the court of the points which are disaffirmed.

The COURT: Gentlemen of the jury, it is unnecessary that the court should go over the evidence, or make any extended statement of the case. The questions involved, the counsel agree, are for the court alone. I may say to you, as I have said to counsel, that I entertain very grave doubts of the right of the plaintiff to recover, because I doubt whether in view of the evidence he is shown to be entitled to anything by virtue of the two contracts on which he has sued. I need not state my reasons for this. The case will be the subject of further consideration after you are done with it. I direct you to find for the plaintiff the amount of his claim.

The court has reserved the questions of law which involve the entire case, and if hereafter on more mature consideration of the law and the evidence the court shall be of opinion that the plaintiff is not entitled to recover, a judgment may be entered for the defendant- notwithstanding your verdict. If there is any mistake in the calculations handed in by the plaintiff it is agreed they may be corrected.

A verdict was thereupon rendered in favor of the plaintiff for $27,672.30.

54 And thereupon, the counsel for the said defendants did then and there except to the *the* aforesaid charge and opinion of the said court, and answers to the said points of defendants, and inasmuch as the said charge and opinion, so excepted to, do not appear upon the record:

The said counsel for the said defendants did then and there tender this bill of exceptions to the opinion of the said court, and requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided.

And afterwards, to wit, October 18, 1893, the defendants moved the court for judgment on the reserved points, notwithstanding the verdict; and afterwards, the motion came on for argument, and thereupon, the court, to wit, on March 6, 1894, ordered judgment to be entered on the verdict in favor of the plaintiff; whereupon the defendants did then and there except to the action of the court in entering judgment for the plaintiff on the points reserved at the trial, and to the refusal of the court to enter judgment on the reserved points in favor of the defendants, notwithstanding the verdict.

And thereupon, the aforesaid judge at the request of the said counsel for the defendants did put his seal to this bill of exceptions, this sixth day of March, 1894.

[SEAL.] WM. BUTLER, *J.*

In the Circuit Court of the United States in and for the Eastern District of Pennsylvania.

WILLIAM IDLER and JOHN W. HAZELTINE, Citizens of the State of Pennsylvania, Administrators *de bonis non* of the Estate of Jacob Idler, Deceased, Plaintiffs in Error,
vs.
CHARLES L. BORGMEYER, a Citizen of the State of New Jersey, Administrator of the Estate of Alexander Chataing, Deceased, Defendants in Error.

No. 1. October Sessions, 1892.

And now, March 13, 1894, come William Idler and John W. Hazeltine, administrators *de bonis non* of Jacob Idler, deceased, the plaintiffs in error, by M. Hampton Todd and Edward H. Weil, Esquires, their attorneys, and say that in the record and proceeding aforesaid there is manifest error in this, to wit:

First. The learned judge erred in refusing to affirm defendants' first point, as follows, namely:

"First. More than six years having elapsed before suit was brought since the right of action accrued on the loan or advance of forty-four hundred pesos, as set forth in Exhibit 'A' of plaintiff's statement, no recovery can be had on the same in this action." And in answering said point as follows: "We cannot so charge under the decisions of the supreme court of this State, which governs us. The parties are subject to the laws of the State as respects all matters affecting the remedy."

Second. The learned judge erred in refusing to affirm the defendants' second point, as follows, namely:

"Second. More than twenty years having elapsed before suit was brought since the right of action accrued on the loan or advance of forty-four hundred pesos, as set forth in Exhibit 'A' of plaintiff's statement, the law presumes the same to have been paid and satisfied." And in answering said point as follows: "I must disaffirm this point. Inasmuch as there was no one to whom payment could be made, there is no presumption of payment. It would be illogical to presume such payment with the fact before us that there was no one to whom payment could be made, administration not having been raised until very recently. The money was not due in the lifetime of the decedent, and the statute did not therefore commence running until after his death."

Third. The learned judge erred in refusing to affirm defendants' third point, as follows:

"Third. The statute of limitations and the presumption of payment in law arising from the lapse of time are both bars to any recovery by the plaintiffs in this action on his demand under Exhibit B" and in answering said point as follows: "I cannot so charge. The point is disaffirmed."

Fourth. The learned judge erred in refusing to affirm defendants' eleventh point, as follows:

"Eleventh. Under the terms of the treaties between the government of the United States and Venezuela, the claim of Alexander

Counsel for defendants except to the refusal by the court of the points which are disaffirmed.

The COURT: Gentlemen of the jury, it is unnecessary that the court should go over the evidence, or make any extended statement of the case. The questions involved, the counsel agree, are for the court alone. I may say to you, as I have said to counsel, that I entertain very grave doubts of the right of the plaintiff to recover, because I doubt whether in view of the evidence he is shown to be entitled to anything by virtue of the two contracts on which he has sued. I need not state my reasons for this. The case will be the subject of further consideration after you are done with it. I direct you to find for the plaintiff the amount of his claim.

The court has reserved the questions of law which involve the entire case, and if hereafter on more mature consideration of the law and the evidence the court shall be of opinion that the plaintiff is not entitled to recover, a judgment may be entered for the defendant- notwithstanding your verdict. If there is any mistake in the calculations handed in by the plaintiff it is agreed they may be corrected.

A verdict was thereupon rendered in favor of the plaintiff for $27,672.30.

54 And thereupon, the counsel for the said defendants did then and there except to the *the* aforesaid charge and opinion of the said court, and answers to the said points of defendants, and inasmuch as the said charge and opinion, so excepted to, do not appear upon the record:

The said counsel for the said defendants did then and there tender this bill of exceptions to the opinion of the said court, and requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided.

And afterwards, to wit, October 18, 1893, the defendants moved the court for judgment on the reserved points, notwithstanding the verdict; and afterwards, the motion came on for argument, and thereupon, the court, to wit, on March 6, 1894, ordered judgment to be entered on the verdict in favor of the plaintiff; whereupon the defendants did then and there except to the action of the court in entering judgment for the plaintiff on the points reserved at the trial, and to the refusal of the court to enter judgment on the reserved points in favor of the defendants, notwithstanding the verdict.

And thereupon, the aforesaid judge at the request of the said counsel for the defendants did put his seal to this bill of exceptions, this sixth day of March, 1894.

[SEAL.] WM. BUTLER, *J.*

In the Circuit Court of the United States in and for the Eastern District of Pennsylvania.

WILLIAM IDLER and JOHN W. HAZELTINE, Citizens of the State of Pennsylvania, Administrators *de bonis non* of the Estate of Jacob Idler, Deceased, Plaintiffs in Error,
vs.
CHARLES L. BORGMEYER, a Citizen of the State of New Jersey, Administrator of the Estate of Alexander Chataing, Deceased, Defendants in Error.

No. 1. October Sessions, 1892.

And now, March 13, 1894, come William Idler and John W. Hazeltine, administrators *de bonis non* of Jacob Idler, deceased, the plaintiffs in error, by M. Hampton Todd and Edward H. Weil, Esquires, their attorneys, and say that in the record and proceeding aforesaid there is manifest error in this, to wit:

First. The learned judge erred in refusing to affirm defendants' first point, as follows, namely:

"First. More than six years having elapsed before suit was brought since the right of action accrued on the loan or advance of forty-four hundred pesos, as set forth in Exhibit 'A' of plaintiff's statement, no recovery can be had on the same in this
55 action." And in answering said point as follows: "We cannot so charge under the decisions of the supreme court of this State, which governs us. The parties are subject to the laws of the State as respects all matters affecting the remedy."

Second. The learned judge erred in refusing to affirm the defendants' second point, as follows, namely:

"Second. More than twenty years having elapsed before suit was brought since the right of action accrued on the loan or advance of forty-four hundred pesos, as set forth in Exhibit 'A' of plaintiff's statement, the law presumes the same to have been paid and satisfied." And in answering said point as follows: "I must disaffirm this point. Inasmuch ar there was no one to whom payment could be made, there is no presumption of payment. It would be illogical to presume such payment with the fact before us that there was no one to whom payment could be made, administration not having been raised until very recently. The money was not due in the lifetime of the decedent, and the statute did not therefore commence running until after his death."

Third. The learned judge erred in refusing to affirm defendants' third point, as follows:

"Third. The statute of limitations and the presumption of payment in law arising from the lapse of time are both bars to any recovery by the plaintiffs in this action on his demand under Exhibit B" and in answering said point as follows: "I cannot so charge. The point is disaffirmed."

Fourth. The learned judge erred in refusing to affirm defendants' eleventh point, as follows:

"Eleventh. Under the terms of the treaties between the government of the United States and Venezuela, the claim of Alexander

Chataing, as set forth in Exhibit B, should have been presented to the mixed commission provided for in said treaties, and that not having been done, the claim cannot be maintained in this action." And in answering said point as follows: "I disaffirm this."

Fifth. The learned judge erred in not entering judgment for the defendant on the defendants' fourth point reserved by the judge at the trial, as follows:

"Fourth. The construction of the contract of compensation is for the court. It was not in contemplation of the parties to that contract that Chataing should receive compensation for an award made by an international tribunal many years after his death, presented and prosecuted by other agents and attorneys. Venezuela having declined and refused payment there can be no recovery based upon any award made in Caracas in 1868 or in Washington in 1890 (Pemberton *vs.* Lochett, 21 Howard, 275); and the verdict under all the evidence must be for the defendant.

Sixth. The learned judge erred in not entering judgment for defendant — the defendants' sixth point, reserved by the judge at the trial, as follows:

Sixth. The undisputed evidence in this case is that no payments have been made by the government of Venezuela on account
56 of the judgment against it and which is set forth in said Exhibit B of plaintiff's statement, and therefore the verdict should be for the defendant.

Seventh. The learned judge erred in not entering judgment for defendant on the defendants' seventh point, reserved by the judge at the trial, as follows:

Seventh. The undisputed evidence in this case is that no payment has ever been made by the government of Venezuela on account of the original judgment or sentence of her courts, and she has uniformly refused and resisted payment of it for more than fifty years past; therefore no obligation to make payment has accrued under Exhibit B of the plaintiff's statement in this action, and the verdict should be for the defendants.

Eighth. The learned judge erred in not entering judgment for defendants on defendants' eighth point, reserved by the judge at the trial, as follows:

Eighth. The effects of the treaties between the Government of the United States and Venezuela on the Idler claim was to nullify and set aside the judgment referred to in Exhibit B, and remit the claimants to their original claims subject to all just and equitable defences.

Ninth. The learned judge erred in not entering judgment for defendants on the defendants' ninth point, reserved by the judge at the trial, as follows:

Ninth. The award in favor of Idler and his associates was made by an international commission administering justice and equity, for the supplies, etc., furnished to them by that government, and was a sentence or award, after full examination of the merits of the claim, irrespective of the original sentence of the Venezuela court.

Tenth. The learned judge erred in not entering judgment for de-

fendants on the defendants' tenth point, reserved by the judge at the trial, as follows:

Tenth. By the decree *restitutio in integrum* the judgment in favor of Idler and his associates was annulled in Venezuela. More than fifty years afterwards an international tribunal made an award to these parties, and the moneys they received were based on that award, and there can be no recovery in this suit.

Eleventh. The learned judge erred in not entering judgment for defendants on the defendants' twelfth point, reserved by the judge at the trial, as follows:

Twelfth. Upon the whole evidence the verdict should be for defendants.

Twelfth. The learned judge erred in charging the jury as follows:

GENTLEMEN OF THE JURY: It is unnecessary that the court should go over the evidence, or make any extended statement of the case. The questions involved, the counsel agree, are for the court alone. I may say to you, as I have said to counsel, that I entertain very grave doubts of the right of the plaintiff to recover, because I doubt whether in view of the evidence he is shown to be entitled to
57 anything by virtue of the two contracts on which he was sued. I need not state my reasons for this. The case will be the subject of further consideration after you are done with it. I direct for you to find for the plaintiff the amount of his claim.

The court has reserved the questions of law which involve the entire case; and if hereafter, on more mature consideration of the law and the evidence, the court shall be of the opinion that the plaintiff is not entitled to recover, a judgment may be entered for the defendant, notwithstanding your verdict.

If there is any mistake in the calculations handed in by the plaintiff it is agreed they may be corrected.

Thirteenth. The learned judge erred in entering judgment for the plaintiff on the reserved points and in not entering judgment for defendants notwithstanding the verdict.

Fourteenth. The learned judge erred in entering judgment for the plaintiff in the sum of $20,239.97.

Fifteenth. The learned judge erred in instructing the jury to find for the plaintiff.

M. HAMPTON TODD,
EDWARD H. WEIL,
Attorneys for Plaintiffs in Error.

Endorsed: No. 1. U. S. C. C., Oct. sess., 1892. Idler *et al.*, plaintiffs in error, *vs.* Borgmeyer, defendant in error. Assignments of error. Filed March 13, 1894. Samuel Bell, clerk. M. H. Todd, E. H. Weil.

Know all men by these presents, that we, William Idler, administrator *de bonis non*, of the estate of Jacob Idler, deceased, as principal, and the Land Title and Trust Company, as surety, are held and firmly bound unto Charles L. Borgmeyer, administrator of the estate of Alexander Chataing deceased, in the full and just sum of

five hundred dollars to be paid to the said Charles L. Borgmeyer adm'r, &c., his certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fourteenth day of March, in the year of our Lord one thousand eight hundred and ninety-four.

Whereas, lately at a circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a suit depending in said court, between Charles L. Borgmeyer, a citizen of the State of New Jersey, administrator of the estate of Alexander Chataing, deceased, against William Idler and John W. Hazeltine, citizens of the State of Pennsylvania, administrators *de bonis non*, of the estate of Jacob Idler, deceased, a judgment was rendered against the said William Idler and John W. Hazeltine, administrators, &c., and the said William Idler and John W. Hazeltine, administrators, &c., having obtained a writ of error and filed a copy thereof
58 in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Charles L. Borgmeyer, administrator, &c., citing and admonishing him to be and appear at a United States circuit court of appeals for the third circuit, to be holden at the city of Philadelphia, within thirty days.

Now, the condition of the above obligation is such, that if the said William Idler and John W. Hazeltine, administrators, &c., shall prosecute their writ of error to effect, and answer all costs if they fail to make plea good, then the above obligation to be void; else to remain in full force and virtue.

WILLIAM IDLER, [SEAL.]
Adm. d. b. n. of Jacob Idler, Dec'd.
THE LAND TITLE AND TRUST COMPANY. [SEAL].
WM. R. NICHOLSON.

Attest: ALBERT D. FELL, *Secretary.*

Sealed and delivered in the presence of—
ALBERT P. RIPLEY.

Approved by—
M. W. ACHESON, *Cir. J.*

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, } *sct:*

I, Samuel Bell, clerk of the circuit court of the United States of America, for the eastern district of Pennsylvania, in the third circuit, do hereby certify the following to be a true and faithful copy of the original pleas and proceedings in the case of Charles L. Borgmeyer, administrator &c., *vs.* William Idler, *et al.*, administrators, etc., No. 1, October session, 1892, on file, and now remaining among the records of the said court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this 12th day of May, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States the one hundred and eighteenth.

SAMUEL BELL,
Clerk of C. C.

59 Before the United States and Venezuelan commission, organized under the treaties of December 5, 1885, and March 15, 1888, between the United States and Venezuela.

WILLIAM IDLER and JOHN H. HASELTINE, Administrators *de bonis non* of Jacob Idler, Deceased, Claimants,
against
THE UNITED STATES OF VENEZUELA.
} No. 2.

Your petitioners, William Idler and John H. Haseltine, administrators as aforesaid, saving and reserving all rights, claims, and demands which they have or may have against the Government of the United States for, on account, or growing out of the matters and things herein set forth, respectfully show to your honorable body:

I. That they are citizens of the United States, and that their said intestate was a citizen of the United States, and prior to and at the time of his decease resided in the city of Philadelphia, in the State of Pennsylvania, and that letters of administration *de bonis non* for administering the said intestate's estate were duly issued to your petitioners, a certified copy of which letters is hereunto annexed, and, with all the other exhibits hereunto annexed, is made part of this petition.

II. That in the year 1817, and subsequently, your peti-
60 tioners' intestate entered into certain contracts with the Republic of Venezuela, by which he bound himself to supply the said Republic with arms, ammunition of war, and military equipments, which contracts were entered into on the part of the Venezuelan government, in the city of Philadelphia, by Brigadier General Lino de Clemente, of the Venezuelan army, who was duly authorized and commissioned for that purpose by the said Republic of Venezuela, under and by virtue of the powers and authority conferred upon him by General Simon Bolivar, as supreme civil and military chief of the said Republic of Venezuela, as set forth in a certain "diploma" or commission, dated at Barcelona, in Venezuela, on the 5th day of January, 1817, supplemented by instructions issued by the said supreme civil and military chief, General Bolivar, to the said Brigadier General de Clemente, on January 6th following, as will more at large appear from Exhibits No. 1 and No. 2, which have been translated from the Spanish documents on file among the papers transmitted in this case by the Department of State to your honorable body, and are hereunto appended and made part of this petition; that the said Brigadier General de Clemente was succeeded as such commissioner or agent of the Venezuelan

Republic by Señor Manuel Torres, who acted under the same authority, and with whom, in the said city of Philadelphia, your petitioners' intestate made similar contracts, all of which contracts were duly fulfilled by your petitioners' intestate, on his part, and for the performance of which on the part of the said Republic of Venezuela the faith and resources of the said Republic were pledged to your petitioners' intestate in and by the aforesaid "diploma" or commission; that the said "diploma" or commission shows upon its face that the said General Bolivar had not undertaken to confer such powers upon the said Brigadier General de Clemente, his successor or successors, without first obtaining from the repre-
61 sentatives of the said Republic or nation of Venezuela the proper authority so to do; that the representatives of the said Venezuelan Republic or nation were at that time the members of the assembly called "Consejo provisional de gobierno," temporarily acting as a legislative body until the national congress, which had already been summoned to convene at Guayana, should meet in convention; that in the year 1817, the confederation known as the "Republic of Colombia" was not in existence, and that the said confederation or Republic, comprising the Republics of Venezuela–New Grenada, was not proclaimed until the 17th of December, in the year 1819.

III. That, as appears from a certificate of the said Brigadier General de Clemente, on file with your honorable body in Spanish, a translation of which is hereunto appended, marked Exhibit No. 3, and made a part of this petition, all the said contracts expressly provided that the goods shipped should be examined and accepted in the United States and paid for in Venezuela.

That in the execution of the said contracts your petitioners' intestate was associated with and assisted by various merchants and firms, who were subsequently known in the history of this claim as "the associates of Jacob Idler," but said contracts with the Venezuelan government were made with the said Jacob Idler, and in his name alone, and it was with him, or with his agents duly appointed, and with him, or them, only, that the Venezuelan government was to deal in all matters pertaining to the said contracts.

IV. That large shipments of military supplies were made to the said Venezuelan government by your petitioners' intestate in the years 1817, 1818, 1819, and 1820, and large sums of money were received by him, or his duly authorized agents, in full and
62 final settlement of some of said contracts, and also on account of some others, and that upon these latter contracts there was a large balance due to your petitioners' intestate from the Venezuelan government, which he endeavored to collect by sending Colonel William Duane, in the year 1822, to Venezuela for that purpose; that the said General Simon Bolivar had previously acknowledged the said indebtedness, and promised that it should be discharged, in a letter dated on the 21st of February, 1821 (on file with your honorable body, marked "State Dep't, No. 1"), to the following effect:

"I promise you that it shall be the first care of the Government,

as it is its duty, to comply with your contracts, and pay what is due under them as speedily as possible. In the meantime, I promise you that the payment of your contracts shall be given preference to that of all others, because I truly believe that they are the most legal, the most just, and the most moderate among all the contracts negotiated or entered into by this Republic."

At a still earlier date, but after the Venezuelan armies had been armed and equipped with the supplies which your petitioners' intestate and his associates had furnished at such great risk of loss, the liberator of South America expressed his gratitude to these foreign friends of Venezuela, and her sacred obligations to them, in the following address, which he delivered at the inaugural session of the Congress of Guayana, on the 15th of February, 1819:

"When the Republic entered into the second period of her existence, our army was destitute of the materials of war. It was without arms, without ammunition, without proper equipments. But now the soldiers of independence are provided, not only with justice, but with material strength. Our troops can measure themselves with the best of Europe. There is no longer any inequality as
63 to the means of destruction that they possess. Such great advantages are owed by us to the unbounded liberality of a few foreigners, who could not contemplate with indifference, as cool, quiet spectators, the sufferings of humanity, and the danger of defeat which the cause of reason and justice was running. Those foreigners hastened to give us their protecting assistance, and furnished the Republic all that it needed to carry to success her philanthropic principles. Those friends of humanity might be called the guardian angels of America; and we owe them a debt of eternal gratitude, as well as a religious fulfillment of the sacred obligations which we have contracted with them.

"The national debt, legislators, is the deposit of the faith, of the honor, of the gratitude of Venezuela. Pay to it the same respect as is due to the holy ark, which contains within its sacred recesses, not only the rights and claims of our benefactors, but the glory of our fidelity. Rather let us perish than break engagements which have saved our country, and the lives of our children."

That on the arrival of the said Colonel William Duane at Caracas he was informed by General Soublette, the intendant or provincial chief, at that city, that application for the liquidation and payment of the said accounts must be made at Bogota, the capital of the new confederation or Republic; that the said Colonel Duane thereupon proceeded upon the difficult and perilous journey of forty days across the Andes, and, on his arrival at Bogota, presented the claim of your petitioners' intestate to General Santander, vice-president in charge of the executive government during the absence of General Simon Bolivar in Peru; that the federal authorities at Bogota, after an examination of the accounts of the said Jacob Idler, admitted a balance of over $100,000, due to him at that time, but subsequently referred the settlement of the said balance back to the Venezuelan government, alleging that General Soublette, the aforesaid intendant

and provincial chief at Caracas, was the proper person to make payment.

64 V. That in the year 1823 your petitioners' intestate, despairing of making a settlement with the Venezuelan government, except through his personal efforts, left his business and family in the aforesaid city of Philadelphia and went to Caracas for the purpose of settling his accounts with the said government; that while he was in the said city of Caracas, engaged in the adjustment and liquidation of his said accounts with the then intendant, General Juan de Escalona, a partial settlement, upon an incorrect accounting, was made at Bogota with one Henry Ogden, who acted for the merchants associated as aforesaid with your petitioners' intestate, but without his authority or consent, although it was with him and in his name alone that the said contracts had been made with the said Brigadier General Lino de Clemente and Manuel Torres, commissioners of the Venezuelan government, as aforesaid; that this unauthorized and illegal transaction between the federal authorities of Colombia and the said Ogden was the cause of some of the differences and disputes which were afterwards settled by litigation in the courts of Venezuela between your petitioners' intestate and the said Venezuelan government, as will hereinafter be set forth; that other differences and disputes (thus finally adjudicated afterwards by the Venezuelan courts) arose from repeated failures on the part of the Venezuelan government to deliver the crops of Barinas tobacco, of which the said government had exclusive control, to your petitioners' intestate, and, in default of such delivery, to pay to him a higher price for the muskets which he shipped to the said government ($20 instead of $12 for each musket), as had been agreed between the said government and your petitioners' intestate (the control and sale of this Barinas tobacco being of great value to your petitioners' intestate, and being an important part of the consideration which moved him to incur the risks

65 and perils of furnishing the said government with military supplies, as aforesaid); that another cause of controversy was a new, unauthorized, and pretended agreement made between the inspecting officers of the said government and an alleged agent of your petitioners' intestate, in Venezuela, for a reduction in the price of over 4,000 muskets shipped on the "Endymion," after inspection and acceptance by the Venezuelan commissioner in the United States, as had been agreed between the parties.

That still another cause of controversy was the protest of certain bills of exchange drawn by the Colombian government on London, and delivered to your petitioners' intestate in part payment of his accounts, which bills your petitioners' intestate sold, and for non-payment of which he was afterwards sued by the purchasers, deprived of his liberty, and put to great trouble and expense.

VI. That on or about the 7th of February, 1825, the said accounts of your petitioners' intestate, growing out of four of his aforesaid contracts, were examined and approved by the aforesaid General Intendant Juan de Escalona, the head of the Venezuelan treasury at Caracas, who, under the laws of those days, was the gen-

eral director and manager of all matters connected with the revenue, property, and financial interests of the nation, and certain balances were found due to your petitioners' intestate, amounting in all to the sum of $164,762.88, as will more at large appear from Exhibit No. 4, which is herewith appended and made a part of this petition.

That the payments made, as aforesaid, to Henry Ogden at Bogota reduced these liquidated balances, to which, however, was afterwards added an allowance by way of damages for the failure of the Venezuelan government to deliver the Barinas tobacco according to contract, as will more at large appear in the liquidation and
66 award made subsequently by Señor G. B. Sprotto, to which reference will hereinafter be made.

VII. That while he was being sued on account of the protest of the aforesaid bills of exchange, which he had received on account from the Colombian government, your petitioners' intestate, in 1827, submitted his accounts, as approved by the said general intendant Escalona, and also his claims for demurrage of the "Endymion," and for damages caused by the failure of the Venezuelan government to deliver the Barinas tobacco, which accounts and claims were examined and approved by the president of the Republic, the liberator, Simon Bolivar himself, as will more at large appear from a certificate made by Gen. Lino de Clemente, which is hereto annexed, marked Exhibit No. 4*a*.

VIII. That upon representations made by the pay officers of the treasury, who claimed that your petitioners' intestate, instead of being a creditor of the government, was debtor to it for over $30,000, judicial proceedings were instituted against your petitioners' intestate to recover that sum, and his departure from the country was forbidden pending said litigation.

This action was brought before a tribunal which at that time had jurisdiction over all matters affecting the national finances, and was the treasury court, consisting of the intendant himself and a high officer learned in the law, called "asesor de hacienda," or legal adviser of the treasury, who assisted the intendant in the exercise of these judicial functions (*parte contenciosa*), and whose signature was necessary to give validity to the acts of the intendant in his capacity of treasury judge.

That the said suit between the treasury and your petitioners' intestate was therefore brought before the intendant of Caracas,
67 and that in the course of the proceedings it occurred to Intendant Mendoza (Escalona's successor) and his asesor, Señor Castillo, that the controversy should be settled by appointing two referees, auditors, or experts to examine and audit the said accounts; that accordingly, on the 28th of May, 1828, Señors Vicente Aramburu and Elias Mocatta were so appointed, as will more at large appear from a translation of a Spanish document on file with your honorable body, marked Exhibit No. 5, in the appendix; that, upon the refusal of those gentlemen to act as referees, two others, José Maria Rojas and Francisco Amantegui, were appointed on the 17th

of October, 1828, but they refused to undertake the labor unless payment of their fees was guaranteed.

IX. That while the controversy over the said accounts was in the aforesaid condition, the matter was brought again to the personal attention of General Simon Bolivar, who was then president of the Republic of Colombia, to whom your petitioners' intestate addressed a memorial, dated September 28, 1828, setting forth his claims and accounts as approved in the sum of $81,386 by Intendant Juan de Escalona, as aforesaid, in answer to which the following reply, dated November 5, 1828, was received through the Secretary of the Treasury:

"His excellency (President Bolivar) has directed me to say that the government acknowledges the justness of your claim, but that the present circumstances of the treasury do not permit its payment. You are, therefore, to wait a little longer (algun tiempo mas) in the assurance that very soon (bien pronto) you will be paid."

That on the same date the president, General Bolivar, wrote also the other letter which is on file with your honorable body, marked "State Dep't, No. 21," exactly to the same effect.

68 X. That after the aforesaid intervention of President Bolivar, to wit, in the year 1829, the position of intendant at Caracas being then filled by Señor Briceno, he and his asesor, Señor Duarte, that is to say, the court of hacienda, resumed consideration of the case, and made an order directing the treasurers of Venezuela to state the accounts of your petitioners' intestate and all the claims and points in dispute, according to their own views, and also directing your petitioners' intestate to make a counter-statement in detail, covering the whole ground, and thus to bring the matter to a head, as will more at large appear from Exhibit No. 6, in the appendix, translated from the document in Spanish, on file with your honorable body, and hereby made part of this petition.

XI. That in compliance with the aforesaid decree, which was dated January 14, 1829, the said treasurers made a report, which was communicated to Mr. Idler, and, upon his reply, the court, that is to say, the intendant and his asesor, decided on the 8th of January, 1830, to appoint Mr. G. B. Sprotto as referee or umpire, giving him power to settle all the questions at issue, as will more at large appear from Exhibit No. 7, in the appendix, translated from the document in Spanish, on file with your honorable body, and hereby made part of this petition.

XII. Your petitioners humbly submit that it is important to bear in mind that this simple and equitable, as well as expeditious method of settlement was adopted by the court after having obtained the consent of the aforesaid treasurers, both to the method and the appointee, as will more at large appear from Exhibit No. 8, in the appendix, translated from the document in Spanish, on file with your honorable body, and hereby made part of this petition.

69 XIII. That the aforesaid referee or umpire submitted his report to the aforesaid court (the intendant and his asesor), dated January 25, 1830, awarding to your petitioners' intestate the

sum of seventy-two thousand three hundred and forty-six dollars and thirty-four cents ($72,346.34), which included interest at six per cent. per annum up to June 30, 1825, as will more at large appear from Exhibit No. 9, in the appendix, translated from the document in Spanish, on file with your honorable body, and hereby made part of this petition.

XIV. That before final proceedings were had upon the aforesaid award (the same being reviewable by the superior court, whether confirmed by the intendant and his asesor or not) a new law was enacted on the 14th of October, 1830, for the reorganization of the treasury, under the provisions of which the courts or tribunals de hacienda ceased to consist of the intendant and the asesor, and were known thenceforward as juzgados de hacienda, and presided over by a judge, who, being required to be learned in the law, was called letrado or de letras (those judges who are not learned in the law being called legos, laymen, or laical.) Exhibit No. 10 in the appendix is a translation into English of the law which provided for this reorganization. By this time Venezuela had withdrawn from the Colombian confederacy, and was again as she was at the commencement of these transactions, entirely independent.

XV. That all the cases then pending before the intendant and his asesor, or legal adviser, were transferred to the juez de letras de hacienda, which was in reality the same court under a new name and a new judge, and each case was taken up as it stood when the intendant and his asesor ceased to exercise judicial functions.

70 XVI. That, exceptions having been taken to the aforesaid report and award of Señor Sprotto by the "tribunal de cuentas," the new court (juez de letras de hacienda) referred the matter to the fiscal (solicitor of the treasury); that the fiscal was the attorney who represented the government before this court of the treasury; that the said fiscal, or law officer, examined the said report and award, and, on the 22d of June, 1831, advised the court to confirm the same. (See Exhibit No. 11, in the appendix.)

XVII. That the said judge (juez de letras de hacienda), Señor Manuel Lopez de Umerez, upon examination of the record, and in conformity with the fiscal's advice, confirmed the said award on the 25th of August, 1831, for $72,346.34, which included interest at six per cent. per annum to the 30th day of June, 1825. (See Exhibit No. 12, in the appendix.)

XVIII. That according to a peculiarity of the law, observed in those days in Spanish countries, the decisions of the courts of hacienda, rendered in the first instance, were not final even if consented to by the parties; that to acquire finality, such decisions required the approval of the superior court, or court of appeals, to which they were referred en consulta (in consultation); that the superior court did not approve or reverse the decisions of the court below without first giving a full hearing to the parties, and, in certain cases, admitting new evidence; that, accordingly, the decision rendered by the said learned judge, Lopez de Umerez, on the 25th of

August, 1831, in favor of your petitioners' intestate, as aforesaid, was referred to the superior court.

XIX. That the said superior court, upon hearing its own fiscal or attorney for the State, found that certain points of Señor
71 Sprotto's liquidation and award needed further explanation, and thereupon directed the case to be sent back to the court below (juez de letras) with instructions to cause a new liquidation to be made by a new auditor or arbitrator, to be appointed by the parties themselves—that is, by the two treasurers of the Venezuelan government and your petitioners' intestate, Mr. Sprotto being then absent from the country. The aforesaid decision of the superior court was rendered on the 22d of December, 1831. (See Exhibit No. 13, in the appendix.)

But, upon appeal, it was decreed by the supreme court on the 8th of May, 1832, that the new auditor, or umpire, should be appointed by the said superior court itself. (See Exhibit No. 14, in the appendix.)

XX. That thereupon the said superior court appointed Señor Pedro Juan Salvi for the aforesaid purpose, but he was objected to by your petitioners' intestate on the ground of lack of knowledge of commercial business and accounts, whereupon the court appointed in his place Señor José Ventura Santana, but, although he at first accepted the position, he shortly afterwards resigned; whereupon (July 23, 1832) Señor José Cadenas was appointed, and accepted the trust. (See Exhibit No. 15, in the appendix.)

XXI. That the said Señor Cadenas, in his capacity of revisor under the said decision of the said superior court, made a new examination of the whole case and went over all the arguments which had been urged both in favor of and against the accounts and claims of your petitioners' intestate, and came to the conclusion that the aforesaid award rendered by Mr. G. B. Sprotto was substantially correct, and admitted of no other amendment than a reduction in several of the items; whereupon the said Señor Cadenas, on the 11th of September, 1832, made his report and award
72 in favor of your petitioners' intestate in the sum of $70,520.11½, interest at six per cent. per annum being calculated, as in Mr. Sprotto's award, to the 30th day of June, 1825. (See Exhibit No. 16, in the appendix.)

XXII. That the said report and award of Señor Cadenas, upon submission to the court (juez de letras de hacienda), were by it communicated to the fiscal or State's attorney, and also to your petitioner's intestate (see Exhibit No. 17, in the appendix); and both parties having set forth in writing their acceptance of the said award (see Exhibit No. 18, in the appendix), the said court, by its decision of September 18, 1832, confirmed the said award, and thus adjudged the State to be indebted to your petitioners' intestate in the sum of $70,520.11½, with interest at six per cent. per annum from the 30th day of June, 1825, interest having been calculated to that date, as aforesaid, and thereupon sent up the case for revision (en consulta, as aforesaid) to the superior court. (See Exhibit No. 19, in the appendix.)

XXIII. That the said superior court, after having heard the fiscal or State's attorney, and in conformity with his advice, affirmed the decision of the court below affirming the said award of the said Señor Cadenas in favor of your petitioners' intestate. This final decision of the superior court, or court of appeals, was rendered on the 1st of October, 1832. (See Exhibit No. 20, in the appendix.)

The said superior court or court of appeals consisted at that time of three distinguished jurists, namely, Señor José de España, Señor José de Sistiaga, and Señor Santiago Hernandez, and the fiscales, or State's attorneys, both in the courts of first instance and in the superior and supreme courts, were generally chosen from among the most distinguished lawyers of the country.

73 XXIV. That your petitioners' intestate, provided with a certified copy of the aforesaid decision, applied to the president of Venezuela requesting him to cause the proper order to be made for the payment of the amount awarded and confirmed as aforesaid; that in his desire to favor the Venezuelan government as much as possible, and knowing the financial embarrassments from which it suffered at that time, your petitioners' intestate suggested that payment might be made as follows, to wit, $15,000 cash, and the balance, with interest, in certificates to be used in the custom-houses of Venezuela in payment of duties; that this petition, dated October 23, 1832, was referred by the president to the secretary of the treasury, who, on the 8th of November following, made an indorsement upon the said petition to the effect that all that had been done by the intendant's court, and by the court of the juez de letras de hacienda, and by the superior court, was null and void for want of jurisdiction; that the supreme court of the Republic was the only tribunal competent to take cognizance of the case, and that, therefore, the decision of the superior court must be ignored, and payment of the judgment refused by the executive branch of the government.

That the president of Venezuela followed the aforesaid advice of the secretary of the treasury, and your petitioners' intestate, who had now been nearly ten years seeking justice in Venezuela, was left again without his money, while his business in Philadelphia had been ruined by his absence and his means had been exhausted in this prolonged and costly litigation.

XXV. That in Venezuela, as in many other countries, the supreme court of the nation is by law the proper tribunal to settle conflicts of authority both between the executive and the judicial departments of the government, and between the courts themselves; that, accordingly, the president's plea of nullity for

74 want of jurisdiction was submitted to the supreme court of Venezuela upon a petition of your petitioners' intestate, to which was attached the petition which he had addressed to the president with the aforesaid indorsement made thereon by the secretary of the treasury; that the government of Venezuela was represented in the supreme court by the fiscal of the said court, whose functions correspond with those of the Attorney General of the United States when acting as counsel for the Government before the Supreme

Court or any other court of the United States of America; that on the 22d of November, 1832, the said fiscal of the supreme court gave his opinion (see Exhibit No. 21, in the appendix) upon the petition of your petitioners' intestate, and upon the objections which had been raised by the executive branch of the government, in favor of the jurisdiction of the juez de letras de hacienda and of the superior court, and, thereupon, the supreme court, accepting the conclusions of the fiscal, overruled the pleas of nullity and want of jurisdiction set up by the president, and, in the name of the Republic, ratified and affirmed the decisions of the court of first instance of September 18, and of the superior court of Caracas of October 1, 1832. (See Exhibit No. 22, in the appendix.)

XXVI. That the said secretary of the treasury, neither satisfied with this decision of the supreme court nor willing to render it due obedience, consulted the "council of government," an advisory body, established by the constitution to assist the executive in grave affairs of State, resembling somewhat the privy council of Great Britain, and consisting of nine members, to wit, the vice-president of the Republic, as chairman, the three members of the cabinet (there were only three departments, interior and justice in one, war and navy in another, and the treasury), with five councillors appointed by the president; that this body, in subserviency to the executive and in subversion of the authority of the supreme court of the nation, passed a resolution on the 1st of March, 1833, to the following effect:

"Resolved by the council, That the government be advised not to issue any warrant for the payment by the treasury of Venezuela of the sums which Mr. Jacob Idler has been adjudged to be entitled to recover, (but) to suspend the payment of the said sums, and to reserve the right of the said Jacob Idler to present his claim when the plenipotentiaries who are to be appointed to make the proper division or apportionment of the debt of Colombia shall have met and commenced their labors."

Your petitioners humbly submit that it is worthy of notice that the council of government did not impeach the liquidation or award which had been affirmed by the superior and supreme courts as aforesaid, but, on the contrary, accepted it, at least implicitly; and that the objection to the issuing of the warrant for the amount adjudged to be due by the Venezuelan government to your petitioners' intestate, was that his claim should have been presented to the commission at Bogota, and that only a part of it was payable by the Venezuelan government. This, however, was one of the very contentions that had been settled by her own highest court against Venezuela. The executive, nevertheless, gave its approval to the resolution of the council on the 7th of March, 1833.

XXVII. That the supreme court of Venezuela, upon complaint of your petitioners' intestate, and upon consideration of the said resolution of "the council of government," and after again hearing the fiscal or attorney general, delivered an opinion on the 25th of April, 1833, wherein it was held that "no attention should be paid to the resolution of the council of government of March 1, approved

by the executive, * * * because, otherwise, the validity
76 and strength given by law to the final decisions of the courts of justice of competent jurisdiction, upon full knowledge of the facts and the law of the case, and in faithful compliance with the precepts of law, would be weakened and destroyed." The foregoing opinion was signed by all the supreme justices—Señores Yanez, Telleria, Martinez, and Anzola.

II.

XXVIII. That after his enforced residence of ten years in Venezuela and when the aforesaid decision of the supreme court had been rendered in his favor, your petitioners' intestate left that country in the spring or early summer of the year 1833, and returned to the city of Philadelphia, in the State of Pennsylvania, where, in October of the same year, he addressed a memorial on behalf of himself and his associates to the President of the United States (General Andrew Jackson), a copy of which is on file with your honorable body, and is also to be found, with the exhibits thereto attached, in Mis. Doc. No. 11, H. R., 45th Congress, 2d session, pages 31–38, and is hereby made part of this petition.

XXIX. That upon consideration of the said memorial of your petitioners' intestate, showing such a flagrant denial of justice by the government of Venezuela as its aforesaid refusal to give effect to the decision of its own highest court in a litigation commenced by its own officers against your petitioners' intestate, and prosecuted through so many years, until at length definitely and finally determined in his favor as aforesaid, the President of the United States, through the Secretary of State (Mr. John Forsyth), sent instructions to Mr. J. G. A. Williamson, who was at that time United States consul at Caracas, to bring the case of your petitioners' intestate to the attention of the Venezuelan government, and to ask for
77 payment of the aforesaid judgment without further delay; that the said Consul Williamson, early in the year 1834, and afterwards, when he was chargé- d'affaires of the United States at Caracas, called upon the said government to pay its debt and render justice, as determined by its own highest court, to your petitioners' intestate.

That subsequently representations were made by the diplomatic agents of the United States to the Venezuelan government, under instructions from the Department of State at Washington, in favor of the claim of your petitioners' intestate, and urging its payment as an act due by the Venezuelan executive to the authority of the Venezuelan judiciary, as well as in justice to your petitioners' intestate and his associates; and that such representations were continued from time to time until the negotiation of the treaty of April 25, 1866, between the United States and Venezuela for the settlement of all pending claims of citizens of the United States against the Venezuelan government by a mixed commission, as will more at large appear from an examination of the correspondence between the Department of State and the United States legation at Caracas, and also between

that legation and the said government of Venezuela, copies of portions of which correspondence are on file with your honorable body.

XXX. That in the year 1853 your petitioners' intestate and his associates, Bogert and Kneeland, Benjamin L. Swan, and the executor of Thaddeus Phelps, presented a memorial to Congress, which was referred in the House of Representatives to the Committee on Foreign Affairs, from which committee, on the 4th of January, 1854, a unanimous report was made by Mr. Chandler, concluding as follows:

"Your committee cannot but express their surprise, in view
78 of the importance of the services rendered to Venezuela by the memoralists, at so critical a period in her history, and in view of the repeated decisions of her own tribunals in favor of the memorialists, that the debt should so long remain unpaid.

"Taking into consideration all the circumstances connected with this claim, your committee are of opinion that it is a case in which the executive government would be justified in interposing its authority to obtain for the claimants their lawful dues. The committee, therefore, recommend that the whole subject be referred to the President of the United States, and move to be discharged from the further consideration of it."

XXXI. That when the claim of your petitioners' intestate had been brought to the attention of the Venezuelan government by United States Consul Williamson, under instructions from President Jackson as aforesaid, the Venezuelan minister of foreign relations replied that, inasmuch as the case had previously been referred by the President of Venezuela to the council of State (consejo de gobierno), it would be necessary to again consult the said council before any definitive action could be taken; that upon further representations by the said consul Williamson, urging the Venezuelan government to honor and obey the decision of its own highest court, the Venezuelan minister of foreign relations replied that a report had been made by the said council of state, dated June 27, 1834, advising the executive to apply to the said court for the benefit of the privilege known as *restitutio in integrum*, a copy of which report in Spanish and a translation into English are on file with your honorable body.

XXXII. Your petitioners humbly submit that it is worthy of notice by your honorable body that only eight of the nine members of the aforesaid council of State were present when the said report was adopted; that one member of the said council, to wit,
79 Señor Telleria, refused to vote because he was one of the justices of the supreme court that had rendered the aforesaid decision in favor of your petitioners' intestate; that of the other seven members of the said council, one was vice-president of the Republic, Señor Diaz was secretary of the treasury, Señor Soublette was secretary of war, and Señor Urbaneja was secretary of the interior; that these four officers, with the president, constituted the executive, and were really the contending parties in the aforesaid litigation between the Venezuelan government and your petitioners'

intestate, and that one of these officers, to wit, General Soublette, had, while intendant at Caracas, repeatedly refused to deliver the crop of Barinas tobacco to your petitioners' intestate, despite his remonstrances and in violation of his exclusive rights under his contracts with the Venezuelan government; that even admitting, for the sake of argument (what is entirely inadmissible on the merits), that the said council of state had authority to review the proceedings of the supreme court of Venezuela or to advise the president of Venezuela to refuse to give effect to its decisions, it was highly improper that those members of the said council who belonged to the executive government of Venezuela and had substantially been parties to the prolonged litigation between the said government and your petitioners' intestate, should vote on the question of dealing with the aforesaid final judgment which had been rendered against themselves and in his favor; that, if these three officers had not voted, the council would have been evenly divided, and could not, by a majority vote, have advised the president to refuse to give effect to the decision of the supreme court of the Republic; that it is, furthermore, worthy of notice that the objections made by the said council against the said decision are the very same that had been urged on the part of the executive officers of the government from the commencement of the
80 litigation by the two treasurers of Venezuela and by the "tribunal de cuentas," or auditors of the treasury, against the report and award of Señor G. B. Sprotto in the year 1831, and had been examined and refuted by the fiscal, or State's attorney (Exhibit 11), and also by the final arbitrator, General José Cadenas (Exhibit 16), whose award was accepted by the parties, and confirmed successively by the treasury court (juez de letras), the superior court, and the supreme court of the Republic.

XXXIII. That (as will be shown to your honorable body by your petitioners' counsel more at large hereafter) the remedy which the said council of state advised the president of Venezuela to invoke, known as *restitutio in integrum*, was obsolete, and, even if it had been in use, would have been inapplicable to such a case as that of your petitioners' intestate, in which the Venezuelan government had really been plaintiff, and, by its proper officers, had resorted for so many years to all the rights, remedies, and means of delay afforded by the law; that the said remedy was not suggested or invoked until after the departure of your petitioners' intestate from Venezuela (which country he did not leave until he had obtained a final judgment in his favor from the supreme court of Venezuela, as aforesaid), and after the intervention of the Government of the United States on his behalf through Consul Williamson, as hereinbefore stated.

That in July, 1834, and again in February, 1835, the Venezuelan executive requested the said supreme court of Venezuela to take cognizance of the case anew for the purpose of granting the aforesaid remedy to the government, but nothing appears to have been done in the matter until the year 1836, when the said supreme court (its personnel having in the meantime been entirely changed) granted permission to the executive to file a petition for the benefit

of *restitutio in integrum* on behalf of the government of Venezuela.

81 That the supreme court, as then constituted, consisted of Chief Justice Mercader, Associate Justice Martinez, and two lawyers, appointed to complete the tribunal (para completar la sala), Señor Nicolas Anzola and Señor Nuñez Caceres. The several decrees which were necessary to effect this reorganization of the court have been translated from the Spanish of the records on file with your honorable body, and are hereunto appended, marked Exhibit No. 23, and made part of this petition.

That the Venezuelan executive encountered another grave difficulty in obtaining a consideration of its petition in the supreme court for the said remedy, namely, that no fiscal or State's attorney could be found in the whole body of fiscales or State's attorneys who would undertake to act as counsel for the government in such a proceeding; that accordingly a fiscal *ad hoc* was appointed, to wit, Señor Francisco Aranda, a lawyer of Caracas, who filed the petition in behalf of the government on the 14th of January, 1836. (See Exhibit No. 24.)

XXXIV. That the supreme court, upon receiving the said petition, made an order directing your petitioners' intestate to be summoned to appear within seventy days, and plead as he might be advised; but, as hereinbefore stated, he had left the country nearly three years previously, and, meanwhile, the Government of the United States had espoused his cause and taken diplomatic charge of his claim.

That personal service upon your petitioners' intestate within the jurisdiction of the said supreme court being therefore impossible, the marshal went to Mr. Alexander Chataing, who had previously been attorney for your petitioners' intestate in Caracas, but was informed by him (the said Chataing) that his authority had ceased; that thereafter a search was made among the procuradores of

82 the said city, but no one was found having authority to represent your petitioners' intestate; that, thereupon, the said supreme court, of its own motion, appointed an attorney for your petitioners' intestate, to wit, Doctor Fermin Felipe Paul; that the said Doctor Paul wrote a letter to your petitioners' intestate requesting him to assent to this appointment (see Exhibit No. 25), but he refused so to do, or in any way to interfere with the Government of the United States in its conduct of his cause.

That the said supreme court of Venezuela, not being satisfied with the validity of its action in appointing an attorney for your petitioners' intestate without his consent, and while he was residing in the United States, issued letters rogatory to the United States district court for the eastern district of Pennsylvania on the 7th of June, 1837 (four years and six months after the final decision in favor of your petitioners' intestate), requesting that court to issue a summons to your petitioners' intestate to appear before the said supreme court of Venezuela and answer the said petition, but the said United States district court merely ordered the marshal to give notice to your petitioners' intestate that such letters rogatory had

been received, and that he could submit any statement he might be advised to make; that your petitioners' intestate was not present when the said notice was left at his residence, and he paid no attention to it whatever.

XXXV. That the said supreme court of Venezuela, although constituted as it was *ad hoc*, took no further action on the government's petition for the said remedy of *restitutio in integrum* until the 4th of November, 1837, when, after making several statements of fact and law in justification of its course, the said court declared that the cognizance of the case in the first instance belonged "to the same courts which had rendered the decision," the *restitutio* or nul-
83 lification of which was desired by the executive; that the said court did not say which court was the one to take cognizance of the case, whether the treasury court (juzgado de hacienda) or the superior court, but returned the record to the said superior court, which was the next in rank below, and left with that court the decision of the question whether to take action itself or send the case to the juez de letras. (See Exhibit No. 26.)

Your petitioners humbly submit that this action of the supreme court was an implicit decision of two things by the highest judicial authority—(1) that up to that date (November 4, 1837) no application had been made on behalf of the Venezuelan government to the proper court for the said privilege of restitution; and (2) that the said court of the treasury (juez de letras de hacienda) and the said superior court were not without jurisdiction in the original suit, as alleged by the president of Venezuela in defense of his first refusal to pay the judgment which was rendered on the 1st of October, 1832, by the said superior court, confirming the award of General José Cadenas in favor of your petitioners' intestate; but that the supreme court, in remanding the petition of the executive to these courts, so that they might take cognizance of the case anew, reaffirmed their jurisdiction of the original suit.

XXXVI. That the records on file with your honorable body do not contain any decision of the treasury court or of the superior court upon the government's said petition, but it does appear from the said records that the said petition was granted by the said superior court, and that an appeal was taken to the supreme court in the name of your petitioners' intestate by the said Dr. Paul, who had been appointed attorney for your petitioners' intestate without his consent, and while he was residing in the United States, by the said supreme court as aforesaid; and that the said supreme
84 court, on the 22d of February, 1839, affirmed the decision of the said superior court, the date of which is not stated, granting the said remedy to the government, and thus assuming to nullify the decisions previously given by the referee, José Cadenas, by the treasury court (juzgado de hacienda), by the superior court, and by the supreme court itself, and ordering the whole matter to be restored to the condition in which it existed on the 31st of August, 1830. (See Exhibit No. 27.)

XXXVII. Your petitioners humbly submit that it is worthy of notice by your honorable body that the opinion of the supreme

court confirming the decision of the superior court, which granted the government's petition for the benefit of *restitutio in integrum*, is not based upon any alleged want of integrity, diligence, ability, or zeal on the part of the courts or of the representatives of the State in the former proceedings, but exclusively upon the old objections to the accounts and claims of your petitioners' intestate, which objections had been examined and overruled by all the arbitrators and courts that took part in the case till its final determination by the supreme court of Venezuela in favor of your petitioners' intestate, as hereinbefore stated.

XXXVIII. That when the said decision of the supreme court was rendered affirming the aforesaid decree of the superior court granting to the government of Venezuela the said remedy of *restitutio in integrum*, the said government sent certain papers in the original suit to the plenipotentiaries of the three Republics, Venezuela, New Grenada, and Ecuador, who were in session at Bogota, to liquidate and apportion the debt of the former confederation of the said Republics, known as the Republic of Columbia; that the said plenipotentiaries, at a meeting held by them on the 17th of April in the same year (1839), refused to take cognizance of
85 the case because the time in which they might have liquidated the accounts and claims of your petitioners' intestate had expired on the 6th of August, 1829, about ten years previously (during which time your petitioners' intestate was defending himself in legal proceedings instituted as aforesaid and prosecuted against him by Venezuelan officials in their own courts until finally determined by the supreme court of Venezuela in his favor, as hereinbefore stated); and that the said plenipotentiaries expressed the opinion that the only thing to be done was to cause your petitioners' intestate to pay back to the Venezuelan treasury what he had received unduly from the Colombian government, although all the payments made on account, either to him or to the agents of his said associates at Bogota, had been charged and allowed against him in the final liquidation and award of the aforesaid José Cadenas, and although the supreme court of Venezuela had twice affirmed the jurisdiction of the treasury court (juez de letras de hacienda) and of the superior court, by which courts the said award had been confirmed as hereinbefore stated.

XXXIX. That the claim of your petitioners' intestate was duly presented on or about the 29th of April, 1868, to the mixed commission which was organized at Caracas under the aforesaid treaty of April 25, 1866, between the United States and Venezuela, and that the administratrix of his estate claimed for and on account of the aforesaid judgment of the supreme court of Venezuela, and the previous judgments of the courts below, confirmed thereby, the sum of $70,529.11½, awarded by the aforesaid final arbitrator, José Cadenas, with interest thereon at the rate of six per cent. per annum from June 30th, 1825 (to which date interest at that rate had been included in the said award), until the 1st day of October, 1832, when the said award was confirmed by the said superior court
86 at Caracas, amounting, at that time, principal and interest,

to the sum of $101,209.28, and interest thereon at the rate of six per cent. per annum from October 1, 1832, to August 1, 1868, the date of the decision of the umpire of the said mixed commission, amounting to $217,599.95, and making in all the sum of $318,809.23; that, upon the disagreement of the commissioners, the said claim was referred to the umpire of the said mixed commission, who made an award in favor of your petitioners' intestate in the sum of $252,814; that the said umpire, instead of calculating interest on the aforesaid award of José Cadenas to the date of its confirmation by the aforesaid superior court, and then calculating interest on the sum total due upon that judgment, calculated simple interest from June 30, 1825, at the rate of six per cent. per annum, on the amount awarded by the said Cadenas, to the date of his own award, thus giving the Venezuelan government an undue advantage of more than $65,000.

XL. That previous and preparatory to the presentation of the claim of your petitioners' intestate to the aforesaid mixed commission, his accounts with his aforesaid "associates," which had been in dispute and had remained unliquidated from the time of his return from Venezuela in 1833, were referred, by consent, to one William H. Whiton, a merchant and expert accountant in New York, for examination and liquidation, upon an agreement that his decision as to the respective interests of the estate of your petitioners' intestate, represented at that time by Sophia Idler, as administratrix, and of the said "associates," their heirs, executors, administrators, or assigns, should be final and conclusive; that it was also agreed, by and between the said parties and the said Whiton, that for his services in making the said examination and apportionment, and for preparing the claim for presentation to
87 the said mixed commission, he should receive an equal, undivided one-third part of the said claim; that thereupon an assignment was made by the said administratrix of your petitioners' intestate to the said Whiton to enable him to apportion the said interests among the parties concerned; that a power of attorney was also made by the said administratrix, and other persons interested in the said claim, to the said Whiton, authorizing him to withdraw any certificates or other evidences of indebtedness which might be issued by the said mixed commission for any award that might be rendered upon the aforesaid claim (which assignment and power of attorney were thereupon filed by the said Whiton in the Department of State and in the United States legation at Caracas, and are among the papers on file with your honorable body); that the apportionment made by the said Whiton was as follows: One-third to the estate of your petitioners' intestate, and one-third to the said "associates," the other third belonging to himself under the aforesaid agreement; that the said Whiton, not expecting to be present in Caracas, and not knowing any one so well worthy of trust and confidence as the Hon. D. M. Talmage, the United States commissioner, made and forwarded to him, with the consent of the other persons interested in the said claim, a power of attorney authorizing him to withdraw any and all such certificates or evidences of in-

debtedness as might be issued for any award that might be rendered by the said commission on the said claim, and to bring them back with him on his return from Venezuela for delivery to the persons concerned, an act proper in itself and afterwards expressly approved by Mr. Secretary Seward and Mr. Secretary Fish; that nine (9) certificates numbered from 335 to 343, both inclusive, each for $28,090.44$\frac{4}{9}$ were issued by the said mixed
88 commission and brought up from Caracas by the said Talmage and delivered to the parties in interest as aforesaid, three of the said certificates being delivered to the said administratrix of your petitioners' intestate, which certificates are now in the possession of your petitioners, and are ready to be produced if required by your honorable body; that (as your petitioners are informed and *and* verily believe) other three of the said certificates were delivered to the trustee or agent of the said "associates" of your petitioners' intestate, and the remaining three certificates were delivered to or retained by the said Whiton for his own use and benefit in accordance with the aforesaid agreement, according to the sworn testimony of the said Whiton and a written statement signed by your petitioner, William Idler, and other owners of the said award, which testimony and statement are to be found in Mis. Doc. No. 11, House of Representatives, 45th Congress, 2d session, pages 4–8; and that there is not now and never has been any controversy concerning the ownership of the said certificates of award, or any of them, to the best of your petitioners' information and belief.

Wherefore your petitioners pray that there may be awarded on this claim the sum of three hundred and eighteen thousand eight hundred and nine dollars and twenty-three cents ($318,809.23), with interest thereon at the rate of five per cent. per annum from August 5, 1868, less the sum of $17,696.98, paid by the department of state on account of interest accrued on the said award of $252,814 in the year 1871, and less, also, the further sum of $20,225.12, paid by the said department on the same account in the year 1876, and that one-third of the amount that may be awarded by your honorable body shall be paid to your petitioners, one-third to the aforesaid "associates," and one-third to the said William H. Whiton, his or their executors, administrators, or assigns, as interest may
89 appear, or that your petitioners may have such other and further relief as to your honorable body, the premises considered, may seem proper and just.

And your petitioners will ever pray.

WILLIAM IDLER,
JOHN W. HASELTINE,
Administrators d. b. n. of Jacob Idler, Deceased.

COUNTY OF PHILADELPHIA, } *ss:*
State of Pennsylvania, }

William Idler, being duly sworn, deposes that he is one of the petitioners in the foregoing petition named, whose name is subscribed thereto; that he has read the said petition and knows its

contents; that he is the son and one of the administrators *de bonis non* of the aforesaid Jacob Idler, deceased; that deponent was with the said deceased in Venezuela from the year 1823 to the year 1833, while the said deceased was endeavoring to effect a settlement of his accounts with the Venezuelan government; and that all the matters and things contained in the foregoing petition are true, to the best of deponent's information and belief.

WILLIAM IDLER.

Subscribed and sworn to before me this 29th day of November, A. D. 1889.

[SEAL.] HENRY S. PARMALEE,
Notary Public.

COUNTY OF PHILADELPHIA, } ss:
State of Pennsylvania, }

John W. Haseltine, being duly sworn, deposes that he is one of the petitioners in the foregoing petition named, whose signature is subscribed thereto; that he has read the said petition, and
90 knows its contents, and that all and singular the allegations and statements of fact therein contained are true, to the best of his knowledge, information, and belief.

JOHN W. HASELTINE.

Subscribed and sworn to before me this 29th day of November, A. D. 1889.

[SEAL.] HENRY S. PARMALEE,
Notary Public.

91 APPENDIX.

EXHIBIT No. 1.

Brigadier General Lino de Clemente's Commission, Credentials, and Powers as Commissioner and Agent of the Republic of Venezuela.

ARMY HEADQUARTERS.
BARCELONA, *January 5th*, 1817.

We, Simon Bolivar, chief magistrate of the Republic, &c., &c., to all those who may see these presents, Greeting:

Know ye, that—

Whereas, the provisional council of state, established to devise, between now and the meeting of congress, which has already been called to convene, such measures as may be considered to be best for the public interests, has recognized that the government of the Republic has already become strong enough to enter into business transactions, negotiations, contracts of all kinds, and political and commercial engagements, and counts with more than sufficient means and resources to meet all the obligations that it may contract:

Therefore we have been pleased to authorize, as we do hereby authorize, Brigadier General Lino de Clemente, and, in case of his

death or absence, Señor Pedro Gual, both of them residents of Philadelphia, in the United States of North America, to enter into all the political and commercial stipulations and agreements herein to be explained, to the faithful fulfillment of which we do pledge beforehand, in the most sacred manner, the faith of the Republic, because on the one hand the faculties and powers herein given are as full and complete as may be required to render all acts under the
92 same valid and firm; and, on the other, the said stipulations and agreements are to be understood to be made, not in behalf of ourselves personally, but in behalf of the ever-existing Republic.

In consequence of the above, we do hereby name, constitute, and appoint the said Brigadier General Lino de Clemente, and, in his place and stead in case of death or absence, Señor Pedro Gual, special agents and commissioners of the Republic of Venezuela in the city of Philadelphia, and give them authority to execute validly and juridically, in the name of the Republic, subject to the instructions given them separately, all kind of deeds and instruments of obligation, which they may have agreed upon with other parties, in the form and on the terms and conditions which may have seemed to them to be the best, it being understood that we shall abide literally by whatever they may have agreed to, without entering into any inquiry or examination, or making any remarks or objections on or to the contracts made by them. All of the said contracts which the said agents or commissioners may make, or enter into, are beforehand approved of by us, as made and entered into in use of the full unrestricted powers and faculties given them by us, faculties and powers which authorize them to deal and stipulate in the name and in behalf of the Republic, and to mortgage her property and her revenue and resources. The said property, revenue, and resources shall be pledged with absolute preference to the payment of the debts contracted by virtue of this authority and in use thereof by the said Brigadier General Lino de Clemente, or by Señor Pedro Gual, as the case may be, if the former is absent or dead.

In testimony whereof we have caused the present instrument to be drawn up, and have signed our name to it, and affixed the seal of the State, and have also caused the same to be recorded at the offices of the provisional council of state, and of the general director of the revenue of the Republic.

SIMON BOLIVAR.

93 EXHIBIT No. 2.

Instructions to the Commissioners.

Instructions given to our commissioners in Philadelphia, Brigadier General Lino de Clemente and Señor Pedro Gual, the latter to act only in case of death or absence of the former.

First. They shall use every possible means that their sagacity and prudence may suggest to secure from the government all the assistance that it may be pleased to give us.

Second. They shall purchase vessels of war, muskets, gunpowder, lead, clothing, equipments, sabres, helmets, saddles, harness, and all kinds of elements of war, and shall draw on the exchequer of the Republic, the prices to be paid either by giving their equivalent amount in cocoa, coffee, indigo, cotton, mules, horned cattle, hides, and produce of the country, or by setting off equivalent sums due the same exchequer for duties on imports or exports, as set forth and agreed upon in the contracts.

Third. To endeavor by every possible way to establish commercial relations between the citizens of the United States of North America and the Venezuelans, so as to cause a reciprocal exchange to be made of the goods manufactured in the one nation and of the productions of the other.

Fourth. They are empowered to grant the contractors who may take to our ports the above said elements of war, all the advantages that may be deemed just, relative either to preference in the payment, or to the choice of the particular kind of articles produced in the country, or to the amount being credited to set-off custom duties.

Fifth. They shall encourage as many people as they can to come to Venezuela and settle within her territory; and their efforts shall be directed especially towards military men, working men, and farmers. The former shall be given positions in the Venezuelan army equivalent in rank to the one- formerly held by them, and the latter shall be given, besides friendly and brotherly reception, such grants of lands, whether already cultivated or still uncultivated, as they may be entitled to on account of their talent, their particular skill, or the benefit that they may do to the country.

94

Given under my hand and the seal of the State, and countersigned by the secretary of state, at the headquarters of the army, at Barcelona, this 6th day of January, 1817, the seventh of the Republic.

BOLIVAR.

EXHIBIT No. 3.

Certificate of Gen. Lino de Clemente.

I, Lino de Clemente, one of the liberators of Venezuela, and a major general of the army of the Republic, &c., &c., &c., do hereby certify: that I entered into several contracts with Mr. Jacob Idler, of Philadelphia, in accordance with the terms and conditions set forth in the "diploma" which was given me by the government of Venezuela, which are the very same agreed upon in the contracts made with me, and subsequently with my successor, Señor Manuel Torres. The contracts made and entered into between Idler and myself were as follows: First. To pay him for each musket twenty hard dollars, which was the price paid him for them at Montevideo. But afterwards we agreed to reduce it to only twelve hard dollars, if the government should give him the monopoly of the Barinas tobacco until full payment of the contracts. Second. That the conditions of the "diploma" under which I and my successor acted were that all the

contracts for supplies made by us in the United States should be finally ended and admitted and liquidated there, and that no alteration or reduction of their terms should ever be made by any authority of the Venezuelan government, it being understood that the articles and effects to be shipped by us were to be examined and received there by us to our satisfaction, as so indeed they were examined and received; and that the amount to be paid Mr. Jacob Idler was to be paid in Venezuela, with preference to any other debt, and in hard dollars, if there was no Barinas tobacco.

In testimony whereof, &c., Caracas, August 12th, 1830.

LINO DE CLEMENTE.

95 EXHIBIT No. 4A.

Certificate of Gen. Lino de Clemente.

I, Lino de Clemente, of the order of the Liberators, and a major general in the army of Venezuela, do hereby certify, at the request of Mr. Jacob Idler, that the said Mr. Idler presented several memorials to his excellency the president, Simon Bolivar, when in this city, in the year 1827, to which memorials the liquidations made and settled between the general intendant, Juan de Escalona, and Mr. Jacob Idler, and the accounts presented at Bogota by Mr. Henry Ogden, were attached, and in which were stated all the undue rebatements and substantial errors made in the latter accounts, as, for instance, the omission of demurrages of the brig "Endymion," and of damages for the non-delivery of the Barinas tobacco, all of which Señor Escalona had properly considered. I further certify that the president, Simon Bolivar, examined the said documents carefully, and decided that the claims should be paid at Bogota, where the general treasury was; and His Excellency promised to see the said payments made in full, according to the contracts, where the general treasury was, and ordered Mr. Idler to go to Bogota, for which city His Excellency himself started on the 5th of July, 1827. Mr. Jacob Idler also started for that city, and had it not been for the unfortunate events which destroyed harmony in the Republic, he then would have been paid.

Caracas, May 13th, 1833.

LINO DE CLEMENTE.

96 EXHIBIT No. 5.

Decree of Intendente Mendoza and "Asesor" Castillo.

CARACAS, *May 28th*, 1828.

For the better settlement of this claim of Mr. Jacob Idler against the government, and in order to render easier the study of its merits, bringing to it light and an intelligent consideration, Señores Vicente Aramburu and Elias Mocatta are hereby appointed referees. In case that both gentlemen should find themselves unable to agree, they shall have authority to appoint, upon consultation with this

court, a third referee, or umpire. The referees are hereby given the power to call for papers and documents, and to ask all other information needed either from the treasury, Mr. Forsyth, Mr. Idler, or Señor Santos Michelena, who was attorney for the latter at Bogota; and they are particularly recommended to make their report as early as practicable.

Let notice of the above be given to Messrs. Idler and Forsyth.

CASTILLO.
MENDOZA.

So it was ordered and decreed by the señor intendente, assisted by the señor "asesor," which I certify.

Before me:

JOSÉ D. GOMEZ,
*Escribano.**

EXHIBIT No. 6.

Decree of Intendente General Briceno and Asesor Duarte.

CARACAS, *January 14th*, 1829.

Let the record of this case be referred to the treasurers, with
97 instructions to make an examination and liquidation of the accounts; the said examination and liquidation to be made with intervention of Mr. Jacob Idler and Mr. Samuel D. Forsyth.

DUARTE.
BRICEÑO.

So it was ordered and decreed by señor intendente general *pro tem.* and señor asesor general. I certify:

JOSE D. GOMEZ, *Escribano.*

EXHIBIT No. 7.

Appointment of G. B. Sprotto as Referee or Umpire.

CARACAS, *January 8th*, 1830.

Let the record of this case be delivered to Señor G. B. Sprotto, in order that he, as umpire, may settle the question arising out of the disagreement between the liquidation made by the treasury and the liquidation made by Mr. Jacob Idler.

DUARTE. SECUNA.

So it was decreed and adjudged by the señor prefecto *pro tem.* of the department and the señor asesor general.

I attest.

JOSÉ D. GOMEZ.

---

* The "escribanos" were like the "clerks" of the courts in the United States, officers before whom all legal acts had to be done, and without whose intervention said acts had no validity.

EXHIBIT No. 8.

The Treasurers' Assent to the Appointment of a Referee.

We, the undersigned, treasurers, have no objection to the reference of the whole subject to Señor G. B. Sprotto as umpire or referee to decide the difference of opinion between Mr. Jacob Idler and ourselves as to the sum of money which, according to us, is due by him to the government. So we state in answer to the decree of November 3d ultimo.

Caracas, December 22d, 1829.

GUILLERMO SMITH.
VINCENTE LECUNA.

98 EXHIBIT No. 19.

Decision of the Treasury Court of Caracas Approving Señor Cadenas' Award.

CARACAS, *September 18th*, 1832.

Whereas, upon examination in full of this case, it appears from the liquidation and award made by Señor José Cadenas, the last umpire appointed upon agreement of both parties, that Mr. Jacob Idler is creditor of the State to the amount of $70,520.11½, the net and liquidated balance of all the contracts entered into by
99 him with the government, and whereas both Mr. Idler and the counsel for the State (ministerio fiscal), who are the only parties to this case, and the only interested ones, have entered their assent to an agreement with the said liquidation and award—

Administering justice in the name of the Republic and under the authority of law, it is hereby declared that the public treasury is responsible to Mr. Jacob Idler for the said sum of $70,520.11½, which shall be paid him in the manner and in the form that the supreme government may determine upon. And the said Idler shall apply for the payment of the said amount to the said supreme government, and file before it a copy of this decision.

Let this decision be referred in consultation to the superior court of justice, for which purpose the original record of all the proceedings shall be sent to it, and let Mr. Idler pay all the costs.

MANUEL LOPEZ DE UMEREZ.

So it was adjudged, decided, and decree by the señor "juez de letras de hacienda" for this province, before me.

I attest.

JOSÉ D. GOMEZ, *Escribano.*

EXHIBIT No. 20.

Decision of the Superior Court Affirming the Decision of the Treasury Court of September 18, 1832.

CARACAS, *October 1st*, 1832.

Upon examination of all the proceedings taken subsequent to the last decision which this superior court rendered in this case, and the arguments orally made by the respective parties—

Whereas, under the decision rendered on September 18, of the present year, by the treasury court of this province, which the said court has referred to us in consultation, it was declared and adjudged that the public treasury is indebted to Mr. Jacob Idler for $70,520.11½, to be paid by the government in the manner and form to be decided by it; and the claimant was directed to apply to the said government and file before it a copy of the judgment, and to pay the costs; and

Whereas, the parties to this case agreed from the beginning of the proceedings to submit the question to arbitration, and they chose Mr. G. B. Sprotto to be the umpire who should settle their disagreement; and

Whereas, a general liquidation was made by the said Sprotto, and was objected to by this superior court on December 22d ultimo, for which reason a reviser was appointed, who was Señor José Cadenas; and

Whereas, from the liquidation and award made by the said reviser, Mr. Jacob Idler is found to be entitled to recover from the government $70,520.11½; and that both parties have assented to this award, and entered their conformity with it, as it appears from the respective entries signed by them—

Administering justice in the name of the Republic and under the authority of law, it is hereby declared and adjudged that the decision of the treasury court (brought up in consultation) is approved of and affirmed.

Let the record be returned to the treasury court with the proper certificate.

JOSÉ DE ESPAÑA.
JOSÉ DE SISTIAGO.
SANTIAGO HERNANDEZ.

Before me:
JOSÉ D. GOMEZ, *Escribano.*

EXHIBIT No. 21.

Opinion of the Attorney General in the Supreme Court of Justice of Venezuela.

To the most excellent supreme court:

The attorney general has examined the complaint filed by Mr. Jacob Idler against the secretary of the treasury, who, by decree of

the 8th instant, refuses to comply with certain judicial decisions, which adjudged the petitioner to be a lawful creditor of the State for a large amount of money, the said debt arising out of several supplies made by the petitioner to Venezuela in the
101 darkest days of the war of independence. The ground on which the secretary of the treasury has based his refusal to obey the decisions aforesaid is, that no authority, except your supreme court of justice, has jurisdiction to properly examine and decide Mr. Idler's claim, and that, therefore, all that has been done during the prosecution of the case is to be ignored. The secretary does not recognize either the validity of what has been done or the competent jurisdiction of the judicial authorities who took cognizance of the case and decided it; and in this way he raised a controversy as to who is the proper authority to settle this matter arising out of contracts made and entered into between the government and Mr. Idler, which, in reality, can be decided only by your most excellent court, under No. 5, article 147, of the constitution.

The attorney general will only consider the question of jurisdiction, above stated, and whether the decisions rendered by the courts in this case are valid, or are null and void, because of the lack of power and authority to render them on the part of the courts. All other questions of fact that the secretary of the treasury has raised have been already considered and settled in the case at the proper time.

The claim of Mr. Idler, most excellent court, was presented to the intendent of this province when the law of October, 1821, was still in force; and under that law the intendant had the same faculties as had been granted to the officers of the same class and name, in Mexico, under the Spanish ordinances of 1786, which were under four heads, namely, justice, politics, finance, and war.

By the law of May 11, 1825, treasury courts, in charge of judges learned in law, were created; and article 111 of the said law gives authority and jurisdiction to the said treasury courts to take cognizance and settle and decide all judicial questions in which the national treasury is concerned. And ever since the promulgation of the said law, the said courts, and no others, have taken cognizance of the innumerable claims presented against the national treasury, whether arising out of contracts made with the government, or out of supplies furnished to the state, in the shape of money, or cattle, or implements of war. Not long ago your most excellent
102 court was called upon to sanction the decision which the same treasury court, now claimed to be without jurisdiction, rendered in the claim of Troane, but the secretary of the treasury did not object in that case to the jurisdiction of the court.

The aforesaid provision of the law of May 11, 1825, is ratified by the law of civil procedure of the 13th of the same year. Article 86 of this law provides that the jueces letrados ought to take cognizance of all matters and cases concerning and affecting the national treasury, whether as plaintiff or defendant.

Another law, of October 14, 1830, provides, by its article 44, that the enactments above referred to ought to be continued.

Under these circumstances, the plea of want of jurisdiction, set forth by the secretary of the treasury, is thoroughly gratuitous, and groundless. It would have been extraordinary for the fiscales, and for the judges and justices who have acted in the case, and who, all of them, are men learned in the law, not to have seen that what was done by them was beyond their jurisdiction. Their own action proves that they always thought that they had authority to do as they did.

The attorney general believes that what he has thus far stated will be sufficient to convince your most excellent court that the judges and justices who have decided this case had, under the laws, full jurisdiction to do so; and he does, therefore, request that a decision to the same effect should be rendered by your most excellent court overruling the plea of the secretary of the treasury.

Caracas, November 22d, 1832.

LANZ.

EXHIBIT No. 22.

Decision of the Supreme Court of Justice Overruling the Plea of Want of Jurisdiction and Affirming the Decision of the Superior Court of October 1st, 1832.

CARACAS, *December 6th*, 1832.

Upon examination of the case of the liquidation and settlement of the accounts of Mr. Jacob Idler for supplies furnished by
103 him, at different times, to the government of Venezuela to secure the independence of the nation, a case which has come to this supreme court, under complaint made by the said Mr. Idler, and in order that this supreme court should decide the question of nullity raised by the secretary of the treasury, by decree of November 8th ultimo, wherein objection is made to all the proceedings taken, and to the decisions of the treasury court and the superior court, on the ground of want of jurisdiction, due attention having been paid to the opinion given by the attorney general, it appearing that this case began, not by reason of any controversy having been raised, either by the government or by Mr. Idler in regard to the validity or invalidity of the contracts entered into by them or their agents respectively, but by reason of Mr. Idler having presented his accounts for the purpose of having them liquidated; and that the said request for a liquidation of accounts filed was made to the intendant, and was granted by him in May, 1828, at a time in which, under the law, the intendants were the authorities of competent jurisdiction to take cognizance of these cases, and constituted a tribunal, which appointed auditors to make the aforesaid liquidation, and also appointed, with the consent of the treasury and of the fiscal, an umpire to decide the question upon the disagreement which had been entered of record; and that the plea of want of jurisdiction was never set up, or alleged; and that this case was followed up in the condition in which it was by the treasury court of this capital, when it was established under the law of May 8th, 1825, which deprived the intendants of judicial power or authority in treasury matters;

and that the said power of the treasury court was reaffirmed by the laws of civil procedure of April 30th and May 1st of the year above said; and that the said treasury court conducted the proceedings until reaching the stage of rendering a decision, which it rendered and sent up in consultation to the superior court, as provided by article 12 of the supplemental law of civil procedure, without anything having been alleged in regard to want of jurisdiction—

The supreme court, therefore, considering the stage reached by this case of liquidation of accounts, does hereby find and hold that the liquidation made settles forever this matter, and that there
104 is no foundation of law upon which to base the plea of nullity for want of jurisdiction which has been set up, for the following reasons: First, because there has been no dispute about the validity of the contracts, which is the case in which, under No. 5, article 147 of the constitution, this supreme court could have exercised jurisdiction in the first instance; second, because both parties have consented to have the case settled as it was, without at any time having set up the plea of want of jurisdiction; and, third and last, because, under the said law of May 1st, art. 86, the juzgados de letras have full and ample power to take cognizance of and decide all cases in which the treasury is interested, either as plaintiff or as defendant.

Whereupon, administering justice in the name of the Republic and under the authority of the law, it is hereby declared and adjudged that the pleas of want of jurisdiction and nullity raised by the executive should be, as they are, overruled; and that the claimant has his right free to act as is proper in the condition of the case.

YANEZ.
MARTINEZ.
ANZOLA.
ALVAREZ.
MANUEL QUINTERO, *Secretary.*

EXHIBIT No. 23.

Reorganization ad Hoc of the Supreme Court.

On February 1st, 1836, Associate Justice José Domingo Duarte asked to be excused because of his previous official action in the case.

On the same date Associate Justice Diego Bautista Urbaneja made the same request.

Both of them were excused, and the following decree was made:

CARACAS, *February 1st*, 1836.

Upon consideration of the reasons set forth in the foregoing petions for excuse, it is hereby ordered by the court that Nicolas
105 Anzola and Licenciate Vicente Castillo shall be, as they are, appointed to act as justices to complete the tribunal (para

completar la sala), and notice of their appointment shall be given them today in order that they may express their acceptance.

L. MERCADER.
MARTINEZ.

Señor Castillo said that he could not accept the position, and then the court made the following order:

CARACAS, *February 5th*, 1836.

In view of the foregoing excuse of Señor Castillo, the Licenciate Pedro Nuñez de Cáceres is hereby appointed to act as justice. Let notice be given him, &c.

L. MERCADER.
MARTINEZ.

Señor Nuñez de Cáceres accepted.

EXHIBIT No. 24.

Petition of Señor Aranda, a Lawyer Appointed to Act as Fiscal or Counsel for the Government in the Matter of Restitutio in Integrum.

To the most excellent court:

The undersigned lawyer, fulfilling in this case the function of the fiscal, appears before Your Excellency and says: That he has carefully examined the record of what has been done for the liquidation of the accounts of Jacob Idler with the government of Colombia, studied the facts, and meditated on the law relative to the remedy, or action, that the executive power wishes to invoke for the nullification of the decisions which adjudged the said Idler creditor of the State of Venezuela for $70,520.11½.

The analysis of the proceedings, which is found in the report of the council of government, transmitted to your most excellent court on September 18th, 1834, was made upon examination of the judicial record, and of all other documents referred to by it, and it is so extensive, so correct, so methodic, and so enlightened in
106 everything regarding the facts that the undersigned feels himself relieved from the necessity to report the results of the examination which he made by himself.

The executive, being surprised at the action of our courts, through which a man, who was considered very properly as a debtor of the treasury for $37,795, was converted into a creditor of the Republic of Venezuela for over $70,000, thus causing the national treasury to lose not only the amount of the latter sum, but also the sum due by Idler, which ought to be recovered and distributed among the States into which the Republic of Colombia divided itself, thought that it was its duty to seek for a better administration of the law by making use of the privilege granted by law 10, tit. 19, partida sixth to the national treasury.

The lawfulness of this step cannot be doubted. There has been in this case no more than one decision requiring the judgment of the superior court; and the remedy of *restitutio in integrum* is only

refused to those entitled to invoke it, when the decision rendered admits of no further appeal. The approval given by the superior court, by virtue of the law requiring the decisions of the court below, in treasury matters, to be sent up to it in consultation, shows by itself that the case went through only one instance, since the counsel for the State assented to the decision of the court below.

The grounds alleged are sufficient to justify the claim of the executive. The wrong done to the treasury was manifest; the decision admitted of appeal; and the time granted by law to invoke the *restitutio* scarcely had begun to run.

But the undersigned must not omit other reasons in support of the petition of the executive.

Law 19, tit. 22, partida third, while providing for the force and effect to be given to *res judicata*, sets forth, nevertheless, certain cases in which the decision rendered can be successfully impeached, and become a nullity. Among other things, the said law reads as follows: "We say, furthermore, that a judgment cannot be undone after it was rendered, unless an appeal is taken against it, even if new letters, or proofs are found afterwards which, if seen in time by the judge, would have caused him to decide another way.
107 But if the judgment is rendered against the king, or against his attorneys, or in cases affecting his treasury or his property, then and in that case the new evidence found shall be allowed to be used for the purpose of undoing what was done by the judgment; but this is to be done within three years subsequent to the date of the judgment; and at any time, if it were proved that the king's attorney was guilty of collusion in aiding the party of the other side, and the judgment was given against the king owing to that collusion, or if it were proved that the judgment was rendered through manifest fraud."

Therefore, even if the time granted by this law in the first part thereof might have been allowed to pass, the treasury would yet be entitled to the privilege of invoking the remedy, because of the manifest fraud committed by the creditor.

The last documents transmitted to your most excellent court by the secretary of the treasury, on February 18th, ultimo, show that Idler presented before the commission for the liquidation of the national debt of the Republic of Colombia, sitting at Bogota, many of the very same claims presented by him in Venezuela, and that after the liquidation of his accounts at that capital, on October, 1829, he continued, however, pressing here for the payment of the same claims which that commission had disallowed.

He has acted in the very same way from the beginning of this affair, concealing at Bogota what could only be proved in Venezuela, and concealing here what transpired at Bogota. It was in this way that he succeeded in persuading the commission of liquidation that the muskets taken here by the Endymion were all to be paid at the rate of twelve dollars apiece, the truth being that an agreement had been entered into with the vice president of Venezuela providing differently. Owing to this concealment of facts, he was paid $24,596, including capital and interest.

This was also the reason why, although repeated decrees had been made referring the present case to the commission of Bogota, because these proceedings had been started for no other reason than the necessity of correcting some previous errors of the said commission, Idler succeeded, nevertheless, in obstructing the
108 faithful execution of those decrees, which were just and lawful, and the only ones in order, under the circumstances. Neither the intendancy or prefecture of the old department of Venezuela, nor the tribunals of the same, had the power to force themselves into an affair which, according to the especial law of public credit, fell exclusively under the jurisdiction of the said commission. If any judicial controversy should have arisen out of the action of the commission, the power to decide it, and the jurisdiction over all claims or suits arising out of the contracts made by the government, belonged to the high court of justice of Colombia.

The first decree to the effect above mentioned was made on May 22d, 1829, and the last one on August 31st, 1830; and at no time between these dates did Mr. Idler reveal that a liquidation was being made at the capital of Colombia, and that it had been finally terminated on September 21st of the same year.

Such an irregular way of acting has resulted in two things, both of them erroneous, and injurious to the public treasury. The commission of Bogota paid Mr. Idler in excess because it had not before its eyes the evidence which is on record here. And the courts of Venezuela have awarded him much more, owing to an error, the responsibility of which belongs to the claimant. The State of Venezuela must be relieved from the arbitrary burden of such an unjust and scandalous claim; and the remedy of *restitutio in integrum* can be happily invoked to secure that end. That remedy can be allowed by your supreme court, and then the case will be restored to the condition in which it was on August 31st, 1830, which is the date of the last decree referring to the commission of Bogota all that had been done up to that time, and requiring Idler to give bond to secure the payment of the $37,795 which the treasurers and the auditors and comptrollers of the treasury proved that Idler was owing.

The undersigned, in fulfillment of his duty, prays the court to be pleased to do as requested above; and further prays that all the costs should be declared to be paid by Idler.

Caracas, January 14, 1836.

FRANCISCO ARANDA.

109 EXHIBIT No. 25.

Letter of Señor Paul, a Lawyer Appointed by the Court to Act as Counsel for Mr. Idler, Giving Notice to the Latter of His Appointment.

CARACAS, *March* 26, 1836.

Jacob Idler, Esq.

MY OLD AND ESTEEMED FRIEND: This letter will make you acquainted with the fact that a movement has been started for the purpose of securing the nullification of the decisions rendered by the

juzgado de letras, and the superior and the supreme courts, in the matter of your claim against this government, and causing them to be considered as if they had never been rendered, this movement having been started by a resolution of the council of government, under which the remedy of *restitutio in integrum* has been invoked against the said decisions.

Unsolicited by me, and merely by the will of the supreme court, the appointment has been made in my favor to act as your counsel, and I have accepted the trust in order to give you a further proof of the good and sincere friendship which I have for you. My appointment was made after a fruitless search was made among the procuradores (regular solicitors) to see whether any one of them had a power of attorney from you, and upon the answer of Mr. Chataing, when notice was given him of the proceedings, that his power of attorney does not cover this case.

I know very well that in the condition of things the decisions rendered cannot be altered, under the pretense of *restitutio in integrum*, as the law refuses that remedy in cases which, like yours, have gone through all the stages of judicial proceedings in all the courts, and have been, therefore, finally terminated and settled.

I transmit, nevertheless, this information to you, in order that you, if you please, may send me your power of attorney with your instructions, or send it to some one else deserving your confidence.

Mr. Williamson, chargé d'affaires, has been informed by me
110 of this new incident. I suggested to him to make some representation on the subject; but he insinuated that I might take charge of your defense in these proceedings, he himself reserving his action for some future time. I inclose a copy of the petition filed by Señor Francisco Aranda, appointed to act in this case as fiscal to which we must make a reply before the supreme court renders its decision.

Please answer me as soon as you can; and wishing to you good health and prosperity, I repeat myself your attentive servant and friend,

FELIPE FERMIN DE PAUL.

EXHIBIT No. 26.

Decree of the Supreme Court Remanding the Case of Restitutio in Integrum to the Court where the Decision the Nullification of which was Sought for had been Rendered.

CARACAS, *November 4th*, 1837.

Upon examination of the petition filed by the counsel for the State, invoking the remedy of *restitutio in integrum* against the decisions rendered by the juez de letras, of this city, on September 18th, 1832, and by the superior court of the district, which at that time, was called central, on October first, of the same year, in the suit for liquidation of accounts between Jacob Idler and the representative of the national treasury, by which decisions the latter was

held to be responsible to Idler for $70,520.11½, a petition which sets forth that the State has been gravely wronged through the said decisions;

And, whereas, this supreme court, having been requested by the executive, through its official communications of September 18th, 1834, and February 18th, 1835, to take cognizance of this affair, which affects the interests of the State, has given to the subject such careful attention as is required by its grave character and circumstances, and heard both the opinion of the lawyer, who, through inability of the fiscal to act officially in this case, has acted
111 in his place, and the argument of the other lawyer, appointed to act for Mr. Idler, owing to the absence of the latter—

This supreme court has, therefore reached the conclusion that the right and power to grant the remedy of *restitutio in integrum*, in the first instance, does not belong to it. Law 3, tit. 25, partida third, provides that the action, by which the nullification of a judicial decision, through the remedy of *restitutio in integrum*, is sought for, must be brought before the same judge who rendered the judgment. The juez de letras of this city was the one who rendered the decision against which the remedy of *restitutio in integrum* is now invoked, and the superior court was the court which approved that judgment.

The executive, by its communications aforesaid, maintains that this matter falls under the jurisdiction and authority of this supreme court; but the court, in examining the record, has found that on page 222, vol. II, there is a decision rendered by it on December 6th, 1832, by which, for the reasons therein explained, the plea of want of jurisdiction set up by the executive against the same judicial decisions referred to was overruled; and as that decision has become *res judicata*, it is impossible for the court to alter its provisions.

On the other hand, it must be observed that if this court should ever undertake to act in the first instance in this matter of *restitutio in integrum*, no remedy would lie against its decision, because none is granted against the decisions of the supreme court. This is the reason why the supreme court has original jurisdiction only in a very limited number of cases.

It must be observed, finally, that the new code of judicial procedure when providing for the "invalidation" of judicial decisions (tit. X), a remedy which is analogous to the one called *restitutio in integrum*, directs that the action should be brought before the judge who rendered the last decision.

Whereupon, administering justice in the name of the Republic and under the authority of the law, it is hereby decided that the jurisdiction over this new action or incident of *restitutio in integrum*, invoked by the lawyer acting as fiscal, belongs to the courts which rendered the decisions against which the remedy has been
112 invoked (corresponde á los tribunals que han librado las determinaciones que causam el reclamo); and therefore let the record be returned to the superior court of the second district, a

copy of this decision being left here. And let the proper notice be given to the executive.

LICENCIADO JOSÉ VICENTE MERCADER.
JUAN MARTINEZ.
NICOLAS ANZOLA.
PEDRO NUÑEZ CÁCERES.

EXHIBIT No. 27.

Decision of the Supreme Court of Venezuela Affirming the Allowance of the Remedy of Restitutio in Integrum to the Executive.

Republic of Venezuela—In its name, the supreme court of justice.

CARACAS, *February* 22*d*, 1839.

Upon examination of the record of the proceeding instituted for the liquidation of the accounts of Jacob Idler for supplies furnished by him to the Republic of Colombia during the war of independence—a matter which has been brought to the cognizance of this supreme court upon appeal, which the counsel for the said Idler took against the decision of the superior court of justice for the second district granting the remedy of *restitutio in integrum* against the decisions of September 18th and October 1st, restoring the whole subject to the condition in which it was on the 31st of August, 1830, and condemning Idler to pay the judicial tax and a portion of the costs—which appeal was joined by the representative of the State, who claims that Idler ought to have been condemned to pay all the costs. Argument having been heard on the part of the representative for the State and of the counsel appointed for Mr. Idler, the following has been found, to wit:

That the decision to be rendered by this court must embrace two points: First, whether the remedy of *restitutio in integrum* is still in existence; second, whether it is applicable to this case.

113 As to the first point, the answer of the court is that, although the code of civil procedure (article 5th of sole law, title 11th, and article 16th of 1st law, title 7th) does not allow now the lapse of time (as a bar against judicial action) to be rendered inoperative, and does, therefore, refuse any remedy tending to invalidate sales made at auction, even if that remedy is the one known by law under the name of *retracto*, or the one called *restitutio in integrum*, the said provisions are to be understood only as exceptions to the general rule, which has been left in force, and is, that, in all cases, outside the special ones excepted, the remedy of *restitutio in integrum* continues to be in existence.

In corroboration of this, it must be said that the Spanish laws themselves had established and recognized some exceptions to the rule they had proclaimed, as, for instance, not to allow a remedy to be used against any decree, or judicial decision, until after the period of three days, granted to ask for reconsideration of the action taken, had elapsed; or refuse it, also, if invoked against depositions of wit-

nesses within the six days which the law grants to impeach said testimony; or refuse it, in the same way, when invoked against sales, if the nine days granted by law for the action of *retracto* have not elapsed, &c., &c. In all those cases, the law made exceptions to the rule, but left the rule that minors and the State, and some privileged persons, can use the remedy of *restitutio in integrum* against judicial decisions and against contracts, standing and in full force.

The said remedy cannot be deemed to be inconsistent with the form of government established in this country, because in all political society there are always exceptions or privileges established in favor of the public cause, which are not inconsistent with reason and with the principles of universal law, and cause no injury to the principle of equality. On the contrary, it may be considered with reason that, owing to the inequality of condition existing *ex origine* in minors, in the State, in the church, and in the incorporated towns or cities, the ground upon which the privilege was granted is a good one, and is still to be kept in mind. That ground was, that the interest of the minor, the State, the church, &c., are entrusted to
114 persons, in many occasions guardians or managers, who do not attend to them with the same diligence and zeal as if they were their own.

The law has provided for this contingency, and prevented negligence, and fraud, from inflicting upon minors, the State, the church, &c., &c., the injurious consequences which ordinarily are not inflicted upon persons non-privileged.

The argument that in our Republic the national estate (*fisco*) is not the patrimony of a family, or person, is one of no little force. But the said *fisco* is, nevertheless, the treasury of the commonwealth, or of the nation. Hence it is that the remedy of *restitutio in integrum* has been resorted to and granted in the tribunals of the Republic, and the reason of equality (that all litigants should be equal before the law) has not been considered sufficient to prevent the remedy from being used.

True it is that certain laws of the recopilacion of Castile forbid the remedy of *restitutio* to be used or invoked against those decisions of the superior courts which do not admit of reconsideration (*suplica*), and that the decree of March 8th, 1827, rendered by his excellency, Gen. Simon Bolivar, provided that the remedy of nullity (casation, of the French—error, of the English) could never be used against decisions rendered in the second instance by the supreme court of hacienda. But it appears, on the one hand, that the decision referred to in this case, which it is said did not admit reconsideration, was rendered in 1832, by an ordinary court, before the establishment of the court of hacienda, and that, on the other hand, all the decrees of Gen. Bolivar in regard to judicial matters were abrogated by a resolution of the constituent congress dated October 14th, 1830. The law which was in force on the subject at the time of the decision was the judiciary organic law of 1825, supplemented by the law of 1826. Under these circumstances, it is clear that the decision herein referred to admitted of reconsideration (*suplica*), and also that the remedy of nullity (writ of error) could be resorted to against it.

If neither of the two remedies was then resorted to or used, and if the opportunity to invoke them was allowed to pass, it is clear that that very omission gives occasion to the remedy of *restitutio* being invoked under the Spanish laws, which this Republic has preserved in full force.

115 A comparative study of the dates in which the judicial decisions herein referred to were rendered, and of the date of the petition of the counsel for the State asking for the writ of *restitutio*, will show that the remedy was resorted to, in due time, within the four years provided for by the 10th law, title 19, part 6.

It has been argued that the 19th law of title 22d, part 3, which provides for the force and effect to be given to final judgments, militates against the use of this remedy. But this supreme court considers that the said law only provides for the case of a judgment rendered against the King or his attorney in which new evidence, consisting of letters or documents, has been found within the three years immediately subsequent, while the other law above cited is applicable in general to all cases of property belonging to the privileged persons therein named which became lost or injured through negligence or fraud of the managers. The text of the law, and its commentary by Gregorio Lopez, states that the action to nullify a sale, when vitiated by *lessio enormissima*, or loss of more than one-half of the value, lasts for 30 years. Now, under the law enacted at Toro, the time is 20 years. In reaching this point, the court will make an analysis of the accounts, liquidations, and documents on record, and will show in a self-evident manner that the injury sustained in this case by the State of Venezuela is *lessio enormissima*.

This at once appears from the fact that the State has been held responsible for a sum which, if due, is to be paid by the three States which constituted the Republic of Colombia. There is no compact or law under which Venezuela alone can be called upon to pay the whole amount.

But the supreme court observes, in addition to this, that many items have been put to the credit of Idler as maliciously and irregularly as things in general have been done in this case.

The Republic of Colombia, through her representative, Manuel Torres, entered into a contract for ten thousand imperial French or English muskets, on September 21st, 1820, upon certain conditions, one of which was the payment of twelve dollars for each musket. This agreement was entered into at Philadelphia.

116 When the muskets were landed here, the proper examination thereof was made by the vice-president of the department of Venezuela, in the presence of Mr. Idler's agent and attorney; and it was found out that only 78 of the said muskets were imperial, and second hand or already used; that other 25 were rifles or for sharpshooters, also second hand, and that the balance consisted of French muskets of a new pattern which was not known, different from the one in use, both in caliber and in the length of the barrel. Some of the muskets had also their triggers very loose.

In consequence of this examination, the vice-president of the department entered a protest, and declared that, although he was not

bound to receive those muskets, he consented, nevertheless, to accept them, in order not to do further injury to the two interested parties; but that the State would pay at the rate of $12 agreed upon in the contract only for 103 muskets, while the balance of 4,257 should be paid for at the rate of $7, in the currency of the country. All the other stipulations of the contract were left untouched. At first some opposition was made to this arrangement by Mr. Idler's agent, but afterwards he yielded the point, as it appears from the document which was drawn up and executed to witness the said arrangement. No objection was raised against the new compact, and, on the contrary, it appears from the evidence that Idler and his associates assented to it.

In spite of these facts, when the liquidation was made at Bogota, the muskets were charged at the rate stipulated in the original or first contract, without deduction of any kind, and without explanation of what had passed. These papers, which form a part of the record, and ought to have been taken into consideration, have been before the eyes of all the experts and auditors who have made the subsequent liquidations, but no notice has been taken of them. The most remarkable item allowed Mr. Idler is the one for damages, arising out of the failure on the part of the government to deliver to him certain amount of tobacco, as stipulated in the contract. In making this allowance, no attention was paid to the fact that the same contract reads that if the government could not gather as much tobacco as was necessary to make the pay-
117 ment within the stipulated time, the payment could then be made in silver dollars, or in gold doubloons.

The experts failed to see, furthermore, that when the general liquidation was made in 1824 and 1825 by the commission at Bogota, with the intervention and assent of all the interested parties, as provided by law, no such a claim for indemnification of damages as was afterward granted was ever presented. Neither the attorneys or agents of Mr. Idler at Bogota, nor Señor Santos Michelena, who received for him $38,192.5¼, said anything about it. And when Señor Vargas presented the claim, the commission refused to grant it. So it appears from the liquidation made at Bogota on April 23d, 1829, when the balance of $4,432.3⅜ reales was found to be due.

The court considers that it is unnecessary for it to dwell upon all the other items unduly allowed, and that it will be sufficient for it to refer to the report of the counsel of government, in which document all the objections to be made to the award have been stated in full. The most singular thing to be noticed in all that has been done in this case is the manner in which Mr. Idler himself has acted. Good faith, sincerity, and purity can never allow any creditor to liquidate his accounts with two debtors at the same time, even if the accounts recognize the double origin, unless the credits are divided. In the present case, Idler, through his attorneys, liquidated his accounts at Bogota, and concealed the true and lawful price to be paid for the muskets.

As some of his claims were disallowed there, he came personally

to this city and endeavored to liquidate again his accounts before the courts, and recover here what was denied to him at Bogota.

All of this is proved by documents sent to this supreme court by the Secretary of the Treasury on February 18th, 1835; and the lack of good faith and sincerity on the part of Mr. Idler seems to be fully shown. Hence it is that he resorted to every possible means of delay, and prevented as much as he could the record of the proceedings of the commission of liquidation from being sent to this court. He also refused to obey the decrees of May 22d and May 23d, 1823, which, even after the division of Venezuela, ad-
118 mitted of no other changes than those which might have arisen out of the liquidation of all the charges against the Republic of Colombia.

In consideration of the above—administering justice, and under the authority of the law, it is hereby adjudged and decreed that the decision against which this appeal was taken is affirmed in every respect.

Let the record be sent back to the court below, after a certified copy of the present decision is made and filed in the chancellor's office.

L. JOSÉ VICENTE MERCADER.
JUAN MARTINEZ.
JOSÉ DUARTE.
NICOLAS ANZOLA.

WASHINGTON, D. C., *December 1st*, 1889.

I, the undersigned, José Ignacio Rodriguez, do hereby certify that the foregoing twenty-eight exhibits are true and correct translations, made by me from the Spanish originals.

JOSÉ IGNACIO RODRIGUEZ.

119 Venezuela—Claims against, under treaty of 1866.

Convention Between the United States of America and the United States of Venezuela for a Reopening of the Claims of Citizens of the United States Against Venezuela under the Treaty of April 25, 1866.

Concluded at Washington, December 5, 1885.

Ratification, with amendments, advised by the Senate, April 15, 1886.

Ratified by the President of the United States of America, August 7, 1888.

Ratified by the president of the United States of Venezuela, August 2, 1888.

Ratifications exchanged at Washington, June 3, 1889.

Proclaimed June 4, 1889.

By the President of the United States of America.

A Proclamation.

Whereas a convention between the United States of America and the United States of Venezuela for a reopening of the claims of citi-

zens of the United States of America against the government of Venezuela under the treaty of April 25, 1866, was concluded and signed by the respective plenipotentiaries of the aforesaid high contracting parties at the city of Washington, on the fifth day of December, one thousand, eight hundred and eighty-five, the original of which convention, as amended by the Senate of the United States of America and being in the English and Spanish languages, is word for word as follows:

Convention for a Reopening of the Claims of Citizens of the United States Against Venezuela under the Treaty of April 25, 1866.

The President of the United States of America having on the 3d day of March 1883, approved the following joint resolu-
120 tion of Congress (public resolution No. 26):

"Joint resolution providing for a new mixed commission in accordance with the treaty of April twenty-fifth, eighteen hundred and sixty-six, with the United States of Venezuela.

Whereas since the dissolution of the mixed commission appointed under the treaty of April twenty-fifth, eighteen hundred and sixty-six, with the United States of Venezuela, serious charges, impeaching the validity and integrity of its proceedings, have been made by the government of the United States of Venezuela, and also charges of a like character by divers citizens of the United States of America, who presented claims for adjudication before that tribunal; and

Whereas, the evidence to be found in the record of the proceedings of said commission, and in the testimony taken before committees of the House of Representatives in the matter, tends to show that such charges are not without foundation; and

Whereas it is desirable that the matter be finally disposed of in a manner that shall satisfy any just complaints against the validity and integrity of the first commission, and provide a tribunal under said treaty constructed and conducted so as not to give cause for just suspicion; and

Whereas, all evidence before said late commission was presented in writing and is now in the archives of the State Department; and

Whereas, the President of the United States has, in a recent communication to Congress, solicited its advisory action in this matter: Therefore—

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he hereby is, requested to open diplomatic correspondence with the government of the United States of Venezuela, with a view to the revival of the general stipulations of the treaty of April 25th, 1866, with said government, and the appointment thereunder of a new commission, to sit in the city of Washington, which commission shall be authorized to consider all the evidence presented before the former commission in respect to claims brought before it, together with such other and further evidence as the

claimants may offer; and from the awards that may be made to claimants, any moneys heretofore paid by the Department of State, upon certificates issued to them, respectively, upon awards made by the former commission, shall be deducted, and such certifi-
121 cates deemed cancelled; and the moneys now in the Department of State received from the government of Venezuela on account of said awards, and all moneys that may hereafter be paid under said treaty, shall be distributed *pro rata* in payment of such awards as may be made by the commission to be appointed in accordance with this resolution."

And the proposal contemplated and authorizeed by the foregoing joint resolution of Congress having been made by the Government of the United States of America to the government of the United States of Venezuela, and accepted by the latter through its diplomatic representative in Washington; the Government of the United States of America and the government of the United States of Venezuela, to the end of effecting by means of a convention arrangements for the execution of the accord thus reached between the two governments, have named their plenipotentiaries to confer and agree thereupon, as follows:

The President of the United States of America, Thomas F. Bayard, Secretary of State of the United States of America; and

The president of the United States of Venezuela, Antonio M. Soteldo, chargé d'affaires of Venezuela at Washington;

Who after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following articles:

Article I.

The general stipulations of the convention of April 25th, 1866, between the contracting parties are hereby revived with such alterations as are required in conformity with the aforesaid joint resolution of the Congress of the United States, and with such further modifications as are deemed necessary for the certain and
122 speedy accomplishment of the ends in view, and for the reciprocal protection of the interests of the high contracting parties as hereinafter provided.

Article II.

All claims on the part of corporations, companies, or individuals, citizens of the United States, upon the government of Venezuela, which may have been presented to their government or to its legation at Carácas, before the first day of August, 1868, and which by the terms of the aforesaid convention of April 25th 1866, were proper to be presented to the mixed commission organized under said convention shall be submitted to a new commission, consisting of three commissioners one of whom shall be appointed by the President of the United States of America, one by the government of the United States of Venezuela and the third shall be chosen by these two commissioners; if they cannot agree within ten days from

the time of their first meeting as hereinafter provided, then the diplomatic representative of either Russia or Switzerland at this capital shall be requested by the Secretary of State and the Venezuelan minister at Washington to name the third commissioner.

In case of the death, resignation or incapacity of any of the commissioners, or in the event of any of them omitting or ceasing to act, the vacancy shall be filled within three months by naming another commissioner in like manner as herein provided for the original appointment.

Article III.

The commissioners so appointed shall meet in the city of Washington at the earliest convenient time within three months
123 from the exchange of the ratifications of this convention, and shall, as their first act in so meeting, make and subscribe a solemn declaration that they will carefully examine and impartially decide, according to justice and in compliance with the provisions of this convention, all claims submitted to them in conformity herewith, and such declaration shall be entered on the record of their proceedings.

Article IV.

The concurring judgment of any two commissioners shall be adequate for every intermediate decision arising in the execution of their duty, and for every final decision or award.

Article V.

So soon as the commission shall have organized, notice shall be given to the respective governments of the date of organization and of readiness to proceed to the transaction of the business of the commission.

The commissioners shall thereupon proceed without delay to hear and examine all the claims which by the terms of the aforesaid convention of April 25, 1866, were proper to be presented to the mixed commission organized under the convention of April 25, 1866; and they shall to that end consider all the evidence admissible under the aforesaid convention of April 25, 1866, in respect to claims adjudicable thereunder, together with such other and further evidence as the claimants may offer through their respective governments, and such further evidence as may be offered to rebut any such new evidence offered on the part of the claimant, and they shall,
124 if required, hear one person on behalf of each government on every separate claim.

All the papers and evidence before the said former commission, now on file in the archives of the Department of State at Washington, shall be laid before the commission; and each government shall furnish, at the request of the commissioners, or of any two of them, all such papers and documents in its possession as may be deemed important to the just determination of any claim.

Article VI.

The commissioners shall make such decision as they shall deem, in reference to such claims, conformable to justice.

The concurring decisions of the three commissioners, or of any two of them, shall be conclusive and final. Said decisions shall in every case be given upon each individual claim, in writing, stating in the event of a pecuniary reward being made, the amount or equivalent value of the same, expressed in gold coin of the United States of America; and in the event of interest being allowed for any cause and embraced in such award, the rate thereof and the period for which it is to be computed shall be fixed, which period shall not extend beyond the close of the commission; and said decision shall be signed by the commissioners concurring therein.

In all cases where the commissioners award an indemnity as aforesaid, they shall issue one certificate of the sum to be paid to each claimant, respectively, by virtue of their decisions, inclusive of interest when allowed, and after having deducted from the sum so found due to any claimant or claimants any moneys heretofore paid by the Department of State at Washington upon certificates issued to such claimants, respectively, upon awards
125 made by the former mixed commission under the convention of April 25th, 1866. And all certificates of awards issued by the said former mixed commission shall be deemed cancelled from the date of the decision of the present commission in the case in which they were issued.

The aggregate amount of all sums awarded by the present commission, and of all sums accruing therefrom, shall be paid to the United States. Payment of said aggregate amount shall be made in equal annual payments to be completed within ten years from the date of the termination of the labors of the present commission. Semi-annual interest shall be paid on the aggregate amount awarded, at the rate of five per cent. per annum from the date of the termination of the labors of the commission.

Article VII.

The moneys now in the Department of State actually received from the government of Venezuela on account of the awards of the said former mixed commission under the convention of April 25, 1866, and all moneys that may hereafter be paid on said former account by the government of Venezuela to the Government of the United States shall be credited to the government of Venezuela in computing the aggregate total which may be found due to the Government of the United States under the stipulations of the preceding article, and the balance only shall be considered as due and payable with interest in ten annual payments as aforesaid. Provided however, That in the event of the aggregate amount which the present commission may find due to the Government of
126 the United States being less than the aggregate of the sums actually received from the government of Venezuela, and remaining undistributed in the Department of State, at Washington,

the Government of the United States will refund such excess to the government of Venezuela within six months from the conclusion of the labors of the commission.

The payment of moneys due from the government of Venezuela to the Government of the United States under the former convention of April 25, 1866, shall be deemed to have ceased from the first day of April, 1883, to be resumed should occasion arise as hereinbefore provided.

Article VIII.

In the event of the annulment of any awards made by the former mixed commission under the convention of April 25, 1866, the Government of the United States is not to be regarded as responsible to that of Venezuela for any sums which may have been paid by the latter government on account of said awards, so far as said sums may have been distributed. In like manner, if the awards made by the present commission and the certificates issued by it shall in any cases be found less than the amount heretofore paid to the claimants from the moneys received from Venezuela, the Government of the United States shall not be regarded as responsible by reason thereof to the government of Venezuela.

The rehearing provided in the present convention affects, as against the Government of the United States, only the installments of moneys paid to and now held by the United States, and those hereafter to be paid; and the effect of such annulment or reduction in any case shall be to discharge the government of Vene-
127 zuela, wholly and forever, from any obligation to pay further installments in such case, except as provided in the present convention.

Article IX.

It is further agreed that if the commission, hereunder organized shall in whole or part annul any money awards made in any cases by the former mixed commission under the convention of April 25, 1866, it shall be the duty of the commission to examine and decide whether, under all the circumstances, and with due regard to principles of justice and equity there are any third parties who have, with the observance of due care and diligence, become possessed, prior to the date of the exchange of ratifications hereof, for a just and valuable consideration, of any portion of the certificates of award heretofore issued in said claims, and whether, under the constitution or laws of either of the contracting parties, said third parties have acquired vested rights, by virtue of the awards of the former commission under the convention of 1866, imposing the duty on the Government of the United States to collect from Venezuela the amount or proportion of said certificates of awards which may be held and owned by third parties.

If the present commission shall decide that there are third parties who are possessed of vested rights, then it shall examine and ascertain the sum paid by each and all of said third parties for their respective interests or shares in said awards, and shall fix the amount of their said interest in said certificates of award or each of them,

and shall issue new certificates of award for the sums so adjudged due, which shall be paid by Venezuela to the United States
128 in the manner hereinbefore stipulated, the same as all other certificates issued by the present commission.

Article X.

Upon the conclusion of the labors of the commission organized in virtue of this present convention, the Department of State of the United States of America shall distribute *pro rata* among the holders of the certificates which may be issued under the present convention, the moneys in the Department of State actually received from the government of Venezuela on account of the awards of the former mixed commission under the convention of April 25, 1866; and all moneys that may hereafter be paid to the United States under this present convention shall be in like manner distributed *pro rata* in payment of such awards as may be made under this present convention.

Article XI.

The decisions of the commission organized under this present convention shall be final and conclusive as to all claims presented or proper to be presented to the former mixed commission.

Article XII.

The commission appointed under this present convention shall terminate its labors within twelve months from the date of its organization. A record of the proceedings of the commission shall be kept, and the commissioners may appoint a secretary.

Article XIII.

Notwithstanding that the present commission is organized in consequence of representations made by the government of
129 Venezuela and that it deals solely with the claims of citizens of the United States, (for which reasons the United States might properly claim that all the expenses hereunder should be borne by Venezuela alone) it is agreed that, in continuation of the arrangement made in the former convention of 1866, the expenses shall be shared as follows: Each government shall pay its own commissioner and shall pay one-half of what may be due to the third commissioner and the secretary, and one-half of the incidental expenses of the commission.

Article XIV.

Except so far as revived, continued, modified and replaced by the terms and effects of this present convention, the effects of the former convention of April 25, 1866, shall absolutely cease and determine from and after the date of the exchange of ratifications of this present convention, and the high contracting parties hereby agree

that the responsibilities and obligations arising under said former convention shall be deemed wholly discharged and annulled by the substitution therefor of the responsibilities contracted and obligations created under this present convention, to which the high contracting parties mutually bind themselves to give full, perfect and final effect, without any evasion, reservation or delay whatever.

Article XV.

The present convention shall be ratified by the President of the United States by and with the advice and consent of the Senate of the United States of America; and by the president of the United States of Venezuela by and with the advice and consent of the senate of the United States of Venezuela, and the ratifications
130 shall be exchanged at Washington within twelve months from the date of this present convention, and the publication of the exchange of ratifications shall be notice to all persons interested.

In testimony whereof the respective plenipotentiaries have hereunto affixed their signatures and seals.

Done in duplicate, in the English and Spanish languages, at the city of Washington, this 5th day of December, 1885.

T. F. BAYARD. [SEAL.]
A. M. SOTELDO. [SEAL.]

And whereas the said convention has been duly ratified on both parts, and the respective ratifications of the same were exchanged at the city of Washington, on the third day of June, one thousand, eight hundred and eighty-nine;

Now, therefore, be it known that I, Benjamin Harrison, President of the United States of America, have caused the said convention to be made public, as amended, to the end that the same, and every article and clause thereof, may be observed and fulfilled with good faith by the United States of America and the citizens thereof.

In witness whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Done at the city of Washington this 4th day of June in the year of our Lord one thousand, eight hundred and eighty-nine,
[SEAL.] and of the Independence of the United States of America, the one hundred and thirteenth.

BENJ. HARRISON.

By the President:
JAMES G. BLAINE,
Secretary of State.

131 *Convention to Remove Doubts as to the Meaning of Article IX of the Preceding Convention and Extending the Time for the Exchange of the Ratifications Thereof.*

Concluded at Washington March 15, 1888.
Ratification advised by the Senate June 18, 1888.
Ratified by the President of the United States of America August 7, 1888.
Ratified by the president of the United States of Venezuela August 2, 1888.
Ratifications exchanged at Washington June 3, 1889.
Proclaimed June 4, 1889.

By the President of the United States of America.

A Proclamation.

Whereas a convention between the United States of America and the United States of Venezuela, to remove doubts as to the meaning of the convention between the same high contracting parties, signed the fifth day of December, one thousand eight hundred and eighty-five, and to extend the time for the exchange of the ratifications thereof, was concluded and signed by their respective plenipotentiaries, at the city of Washington, on the fifteenth day of March, one thousand, eight hundred and eighty-eight, the original of which convention, being in the English and Spanish languages, is word for word as follows:

Convention Between the United States and Venezuela to Remove Doubts as to the Meaning of the Convention Signed December 5, 1885.

Whereas doubts have arisen in respect of the true intent and meaning of article IX of the treaty between the United States of America and the United States of Venezuela signed at Wash-
132 ington on the fifth day of December, 1885, and, in consequence of such ambiguities, the exchange of ratifications of said treaty has not taken place within the period therein prescribed for such exchange;

And, whereas, the high contracting parties are desirous of removing all doubts in respect of the meaning and intent of said article, and of extending the time for the exchange of ratifications of said treaty, to the end of reaching an amicable and honorable solution of the difficulties that now impair their good relations;

The Government of the United States of America and the government of the United States of Venezuela, have named as their plenipotentiaries to conclude a convention for that purpose: the President of the United States of America, Thomas F. Bayard, Secretary of State of the United States of America; and the president of the United States of Venezuela, José Antonio Olavarria, chargé d'affaires of Venezuela at Washington; who, after reciprocal com-

munication of their full powers, found in due and good form, have agreed upon the following articles:

Article I.

It is understood and agreed that in the event of any of the awards of the mixed commission under the convention of April 25, 1866, being annulled in whole or in part by the commission authorized and created by article II of the treaty of December 5, 1885, no new award shall in any case be made by said commission, to the holders of certificates of any award or awards annulled as aforesaid, in excess of the sum which may be found to be justly due to the original claimant.

133

Article II.

The time fixed for the exchange of the ratifications of the aforesaid treaty between the United States and Venezuela signed at Washington on the fifth day of December, A. D. one thousand eight hundred and eighty-five, is hereby extended to a period not exceeding five months from the date of this convention or sooner if possible.

Article III.

The present convention shall be ratified by the President of the United States of America by and with the advice and consent of the Senate thereof, and by the president of the United States of Venezuela by and with the advice and consent of the congress thereof, and the ratifications shall be exchanged at Washington as soon as possible within the time specified in article II hereof as the period of extension of the time for the exchange of ratifications of the treaty signed at Washington on the fifth day of December, 1885.

In witness whereof the respective plenipotentiaries have signed and sealed the present convention in duplicate.

Done at Washington this 15th day of March, A. D. 1888.

T. F. BAYARD. [SEAL.]
J. A. OLAVARRIA. [SEAL.]

And whereas the said convention has been duly ratified on both parts, and the respective ratifications of the same were exchanged at the city of Washington, on the third day of June, one thousand eight hundred and eighty-nine:

Now, therefore, be it known that I, Benjamin Harrison, President of the United States of America, have caused the said convention to be made public, to the end that the same, and every article and clause thereof, may be observed and fulfilled with good faith by the United States of America and the citizens thereof.

134 In witness whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Done at the city of Washington this 4th day of June, in the year

of our Lord one thousand eight hundred and eighty-nine,
[SEAL.] and of the Independence of the United States of America the one hundred and thirteenth.

BENJ. HARRISON.

By the President:
JAMES G. BLAINE,
Secretary of State.

135 *Supplementary Convention Further Extending the Period Fixed for the Exchange of Ratifications of the Convention of December 5, 1885, and Extending that Fixed for the Explanatory Convention of March 15, 1888.*

Concluded at Washington, October 5, 1888.
Ratification advised by the Senate, December 5, 1888.
Ratified by the President of the United States of America, January 30, 1889.
Ratified by the president of the United States of Venezuela, May 11, 1889.
Ratifications exchanged at Washington, June 3, 1889.
Proclaimed June 4, 1889.

By the President of the United States of America.

A Proclamation.

Whereas a supplementary convention between the United States of America and the United States of Venezuela, to further extend the period fixed for the exchange of ratifications of the convention of December 5, 1885, and to extend the period for the exchange of the ratifications of the convention of March 15, 1888, between the same high contracting parties, was concluded and signed by their respective plenipotentiaries of the city of Washington on the fifth day of October, one thousand eight hundred and eighty-eight, the original of which supplementary convention, being in the English and Spanish languages, is word for word as follows:

Supplementary Convention between the United States of America and Venezuela, to Further Extend the Period Fixed for the Exchange of Ratifications of the Convention of December 5, 1885, and to Extend the Period for the Exchange of the Ratifications of the Convention of March 15, 1888.

Whereas, by articles I and II of a convention, signed and concluded by the respective plenipotentiaries of the United States
136 and Venezuela, in the city of Washington, on the 15th day of March, 1888, it was provided that the time fixed by the convention between the said parties, signed and concluded December 5, 1885, for the exchange at Washington of the ratifications thereof, should be extended to a period not exceeding five months from the date of said convention, to wit, from the 15th day of March, 1888,

or sooner if possible, and that the ratifications of the said convention of March 15, 1888, should in like manner be exchanged at Washington within the same period;

And whereas the period, as aforesaid prescribed, elapsed on the 15th day of August, 1888, without such exchange having been effected;

And whereas it appears that the congress and government of Venezuela did, according to the constitutional forms of that Republic, ratify and confirm the said conventions at Caracas on the 27th day of July, 1888, and that the president of the Republic of Venezuela did on the 2d day of August, 1888, fully empower the representative of that Republic in the United States to exchange ratifications thereof with whoever should be duly authorized on behalf of the United States;

And whereas the said conventions having been theretofore duly ratified by the President of the United States, by and with the advice and consent of the Senate thereof, the Secretary of State of the United States, duly empowered by the President of the United States, was ready on and before the said 15th day of August, 1888, to effect the exchange of ratifications of the said conventions as stipulated;

And whereas, by reason of unavoidable delay, the copy of the said convention ratified by the government of Venezuela as aforesaid and the necessary powers to enable the representative
137 of that government in the United States to make exchange of ratifications could not be produced in the city of Washington, D. C., until after the expiration of the period so as aforesaid stipulated for the exchange of ratifications;

Now, therefore, the governments of the United States and Venezuela, being desirous of completing and putting in force the two conventions aforesaid at the earliest day possible, have respectively named as their plenipotentiaries to conclude a convention for that purpose,

The President of the United States of America, Thomas F. Bayard, Secretary of State of the United States of America,

And the president of the United States of Venezuela, Francisco Antonio de Silva, chargé d'affaires of the United States of Venezuela at Washington;

Who, after reciprocally satisfying each other in good and due form of their competency to negotiate to such end, have agreed upon the following articles:

Article I.

The time fixed, by articles I and II of the convention between the contracting parties, signed at Washington, the 15th day of March, 1888, within which to effect the exchange of the ratifications of the convention between said parties signed at Washington, on the 5th day of December, 1885, and also of the said convention of the 15th day of March, 1888, is hereby extended to a period not exceeding ten months from the 15th day of August, one thousand eight hundred and eighty-eight, or sooner if possible.

Article II.

The present convention shall be ratified by the President
138 of the United States of America, by and with the advice and consent of the Senate thereof; and by the president of the United States of Venezuela, by and with the advice and consent of the congress thereof; and the ratifications shall be exchanged at Washington, as soon as possible within the time specified in article I hereof as the period of extension of the time for the exchange of ratifications of the convention signed at Washington, on the 5th day of December, 1885, and of the convention signed at Washington on the 15th day of March, 1888.

In witness whereof, the respective plenipotentiaries have signed and sealed the present convention in duplicate, in the English and Spanish languages.

Done at Washington, this fifth day of October, in the year of our Lord, one thousand eight hundred and eighty-eight.

T. F. BAYARD. [SEAL.]
Fco ANTo SILVA. [SEAL.]

And whereas the said supplementary convention has been duly ratified on both parts, and the ratifications of the same were exchanged at the city of Washington, on the third day of June, one thousand eight hundred and eighty-nine;

Now, therefore, be it known that I, Benjamin Harrison, President of the United States of America, have caused the said supplementary convention to be made public, to the end that the same, and every article and clause thereof, may be observed and fulfilled with good faith by the United States of America and the citizens thereof.

In witness whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Done at the city of Washington this 4th day of June in the year of our Lord one thousand, eight hundred and eighty-nine,
[SEAL.] and of the Independence of the United States of America, the one hundred and thirteenth.

BENJ. HARRISON.

By the President:
JAMES G. BLAINE,
Secretary of State.

139 APPENDIX.

(For convenience the convention of 1866 is reprinted.)

Convention between the United States of America and the Republic of Venezuela for Adjustment of Claims, Concluded at Caracas April 25, 1866; *Ratification Advised by Senate July* 5, 1866; *Ratified by President August* 8, 1866; *Ratifications Exchanged at Caracas April* 17, 1867; *Proclaimed May* 29, 1867.

The conclusion of a convention similar to those entered into with other republics, and by which the pending American claims upon

Venezuela, might be referred for decision to a mixed commission and an umpire, having been proposed to the Venezuelan government on behalf of the United States of America, as a means of examining and justly terminating such claims; and it having been thought that the adoption of the contemplated course will secure, at least, some of the advantages attending arbitration, so strongly recommended in article the 112th of the federal constitution of Venezuela, while it will preserve unimpaired as reciprocally desired, the good understanding of both nations, the citizen first vice-president in charge of the presidency has accepted the above proposal and authorized the minister for foreign relations to negotiate and sign the proper convention. Thereupon said minister and Mr. E. D. Culver, minister resident of the United States of America, also duly empowered for that purpose, have agreed upon the following articles of convention:

140 Article I.

All claims on the part of corporations, companies or individuals, citizens of the United States upon the government of Venezuela which may have been presented to their Government or to its legation in Caracas shall be submitted for examination and decision to a mixed commission consisting of two members, one of whom shall be appointed by the Government of the United States, and the other by that of Venezuela. In case of death, absence, resignation or incapacity of either of the commissioners, or in the event of either of them omitting or ceasing to act, the Government of the United States, or that of Venezuela respectively, or the minister of the United States in Caracas, by authority of his Government shall forthwith proceed to fill the vacancy.

The commissioners so named, shall meet in the city of Caracas within four months from the exchange of the ratifications of this convention; and before proceeding to business they shall make solemn oath that they will carefully examine and impartially decide according to justice, and in compliance with the provisions of this convention, all claims submitted to them; and such oath shall be entered on the record of their proceedings.

The commissioners shall then proceed to appoint an umpire, to decide upon any case or cases concerning which they may disagree or upon any point of difference, that may arise in the course of their proceedings. And if they cannot agree in the selection, the umpire shall be named by the diplomatic representative either of Switzerland or of Russia in Washington, on the previous invitation of the high contracting parties.

141 Article II.

So soon as the umpire shall have been appointed, the commissioners shall proceed without delay to examine the claims, which may be presented to them, under this convention; and they shall, if required, hear one person in behalf of each government on every

separate claim. Each government shall furnish, on request of either commissioner, all such documents and papers in its possession, as may be deemed important to the just determination of any claim.

In cases, where they agree to award an indemnity, they shall determine the amount to be paid, and issue certificates of the same. In cases, when the commissioners cannot agree, the points of difference shall be referred to the umpire before whom each of the commissioners may be heard, and whose decision shall be final.

The commissioners shall make such decision as they shall deem, in reference to such claims, conformable to justice, even though such decisions amount to an absolute denial of illegal pretensions, since the including of any such in this convention is not to be understood as working any prejudice in favor of any one, either as to principles of right or matters of fact.

Article III.

The commissioners shall issue certificates of the sums to be paid to the claimants respectively by virtue of their decisions, or those of the umpire; and the aggregate amount of all sums awarded by the commissioners, and of all sums, accruing from awards made by the umpire, shall be paid to the government of the United States.

Payment of said sums shall be made in equal annual pay-
142 ments, to be completed within ten years from the date of the termination of the labors of the commission; the first payment to be made six months from the same date. Semi-annual interest shall be paid on the several sums awarded, at a rate of five per cent. per annum from the date of the termination of the labors of the commission.

Article IV.

The commission shall terminate its labors in twelve months from the date of its organization, except that thirty days' extension may be given to issue certificates, if necessary, on the decisions of the umpire in the case referred to in the following article. They shall keep a record of their proceedings, and may appoint a secretary.

Article V.

The decisions of this commission and those (in case there may be any) of the umpire, shall be final and conclusive as to all pending claims at the date of their installation. Claims which shall not be presented within the twelve months, herein prescribed will be disregarded by both governments, and considered invalid.

In the event, that upon the termination of the labors of said commission, there should remain pending one or more cases before the umpire, awaiting his decision, the said umpire is authorized to make his decision and transmit same to the commissioners, who shall issue their certificates thereupon and communicate (them) to each government, which shall be held binding and conclusive; provided however that his decision shall be given within thirty days

from the termination of the labors of the commission, and after the expiration of the said thirty days, any decision made shall be void and of no effect.

143 Article VI.

Each government shall pay its own commissioner and shall pay one-half of what may (be) due the umpire and secretary, and one-half the incidental expenses of the commission.

Article VII.

The present convention shall be ratified, and the ratifications exchanged, so soon as may be practicable, in the city of Caracas.

In testimony whereof the plenipotentiaries have signed this convention and hereunto affixed the seals of the ministry of foreign relations of the United States of Venezuela, and of the legation of the United States of America in Caracas this twenty-fifth day of April, in the year one thousand eight hundred and sixty-six day of April, in the year one thousand eight hundred and sixty-six.

The Minister Resident of the United States of America,
E. D. CULVER. [SEAL.]
The Minister of Foreign Relations of the United States of Venezuela,
RAFAEL SEIJAS. [SEAL.]

144 Claim of—

JACOB IDLER
vs.
THE UNITED STATES OF VENEZUELA.
} No. 2. July 14, 1890.

(JULY 14, 1890.)

LITTLE, for the Commission:

This case, because of its importance and complications of controverted fact and law, is treated with unusual and, perhaps, unnecessary fulness.

Statement of Facts.

In 1817 Venezuela, then engaged in war for independence, through her chief magistrate—military and civil—Simon Bolivar, issued what was denominated a "diploma," addressed "to all those who may see these presents," from which the following extracts were taken:

"We do hereby authorize Brigadier General Lino de Clemente, and, in case of his death or absence, Señor Pedro Gual, both of them residents of Philadelphia, in the United States of North America, to enter into all the political and commercial stipulations and agreements herein to be explained, to the faithful fulfilment of which we do pledge beforehand, in the most sacred manner, the faith of the Republic." * * *

"And give them authority to execute validly and juridically, in the name of the Republic, subject to the instructions given them separately, all kind of deeds and instruments of obligation, which

they may have agreed upon with other parties, in the form and on the terms and conditions which may have seemed to them to be the best, it being understood that we shall abide literally by whatever they may have agreed to, without entering into any inquiry or examination, or making any remarks or objections on or to the contracts made by them. All of the said contracts which the said agents or commissioners may make, or enter into, are beforehand approved of by us, as made and entered into in use of the full unrestricted powers and faculties given them by us, faculties and powers which authorize them to deal and stipulate in the name and in behalf of the Republic, and to mortgage her property and her revenue and resources. The said property, revenue, and resources shall be pledged with absolute preference to the payments of the debts contracted by virtue of this authority and in use thereof by the said Brigadier General Lino de Clemente, or by Señor Pedro Gual, as the case may be, if the former is absent or dead."

The "instructions given them separately," above referred to, include these paragraphs:

"Second. They shall purchase vessels of war, muskets, gunpowder, lead, clothing, equipments, sabres, helmets, saddles, harness, and all kinds of elements of war, and shall draw on the exchequer of the Republic, the prices to be paid either by giving their equivalent amount in cocoa, coffee, indigo, cotton, mules, horned cattle, hides, and produce of the country, or by setting off equivalent sums due the same exchequer for duties on imports or exports, as set forth and agreed upon in the contracts."

"Fourth. They are empowered to grant the contractors who may take to our ports the above said elements of war, all the advantages that may be deemed just, relative either to preference in the payment, or to the choice of the particular kind of articles produced in the country, or to the amount being credited to set off custom duties."

From its address and contents, it is manifest the diploma was intended to influence dealings with, as well as to define the authority of, the agents of that province.

Beginning that year, accordingly, in the exercise and on the faith of powers thus given, contracts on behalf of Venezuela were entered into at Philadelphia, with Jacob Idler, a merchant of that city, whereby, as it seems—though the contracts themselves have not been exhibited, and their purport is in some degree inferred—he undertook for himself or for himself and those concerned or to be concerned with him, called in the papers his "associates," to furnish military supplies for the use of the patriot forces of that country.

The associates were Bogart and Kneeland, Thaddeus Phelps & Co., and Benjamin L. Swan, of New York, and Hammond and Newman, of Baltimore. Just to what contracts and shipments their interests respectively extended is involved in some uncertainty. There is an agreement, however, on file, made March 17, 1868, which frees the case from embarrassment in this respect if its recitals touching Hammond and Newman can be taken as correct, as we suppose they

may be. All were citizens of the United States, and representation is made here in their behalf.

For three years Clemente acted as the agent of Venezuela in that behalf; then, instead of Gual named in the diploma, Torres succeeded to the agency, but whether on behalf of the same principal is one of the questions raised.

The business on the agents' part seems to have been done with Idler, who was looked to as the responsible contractor. During four years, the most uncertain perhaps in the long struggle of the Spanish-American provinces for liberty, he alone, or in association as aforesaid, in the execution of the contracts thus made, sent out large quantities of arms and army stores to Venezuela. Of flints there were over 250,000; of fire-locks over 25,000; and of muskets, in the last eighteen months of the period, over 11,000 (the record does not show how many before).

At the completion of the contracts on their part, and for several years afterwards, four invoices remained, contrary to agreement, in largest part unpaid for. One of these was by the brig Elena, lost by capture at sea in 1817 through the alleged fault of the Venezuelan agent, and liquidated by the agreement of the parties in 1820; two by the brigs Wilmot and Endymion, arriving in Angostura
146 in May and November, respectively, 1820, and a fourth and last, also by the Endymion, arriving at La Guyra in October, 1821. The last embraced 4,360 French muskets, which became a subject of controversy.

The balance remaining due on these four shipments exceeded, according to liquidations, in 1824, $157,000—a large sum in that time to be owing an American firm, to say nothing of other items of charge brought forward later, connected with the transactions, amounting to nearly half as much more.

Naturally, Idler and associates after their money was overdue a few months, became solicitous about payment.

The banks which had accommodated them became urgent. Pressing requests—even appeals to the South American authorities were made—but without present relief. Payment on account was urged without response. Then began a course of liquidation resulting in litigation, and finally, in diplomatic action, which, taken all in all, presents certainly a remarkable chapter in the history of reclamations.

The Idler claim has been a theme for the press and pamphleteer in both countries. It has arrested the attention of the foreigner. Among the papers is an autograph letter from Rudolph Humboldt on the subject, a nephew of the great savant, and himself a distinguished traveller and scholar. The claim has been before the Congress, more than once, of each country, and has been the subject of, at least, earnest discussion, long continued, and ending only with the treaty of 1866, between the two governments.

Among the difficulties confronting the contractors at the outset of their efforts of collection, seems to have been uncertainty as to the place and source of settlement. The remark may be applied also to the South American authorities. And there is not unanimity even

now among the learned upon the question, as the expediente and briefs—numerous and voluminous—in the case abundantly testify.

Just here it may be well to note some changes that had taken place meantime affecting Venezuela. In 1819–'21, Venezuela and New Grenada united and formed the Republic of Columbia. On the one hand, it is contended, the union occurred December 17, 1819; on the other, July 12, 1821. The question will be recurred to further on.

The "fundamental law," so called, of July 12, 1821, adopted by the Columbian Congress, provided:

"The debts which the two peoples may have contracted separately are acknowledged *in solidum* by this law as a national debt of Columbia, and all the property of the Republic is responsible for its payment."

A commission was created to sit at Bogota for the liquidation of such debts.

The constitution of Columbia was adopted August 30, 1821. Under it a complete transformation in administrative affairs took place. A central government was established at Bogota. The chief executive power was vested in a president. Bolivar
147 was made that officer, and clothed with extraordinary authority. The territory of Columbia was divided into seven departments. There were three in Venezuela, each with its distinctive name. The central one, comprising not more than a third of Venezuela, though greatly more than that proportion of its inhabitants and wealth, was called the department of Venezuela. Its executive seat was Caracas.

The law establishing the division provided:

"The political command of each department is vested, pursuant to the constitution, in a magistrate called intendent under the orders of the president of the Republic, whose natural and immediate agent he shall be."

He was invested, "in his capacity of chief of the department," as the law ran, with all the police, judicial, and administrative powers formally conferred upon colonial chiefs or governors by the foreign parent government. These were extensive. There was also provided for each department, quoting from the statute, "a deputy learned asesor with the same object, jurisdiction and powers."

Venezuela was made a judicial district, having a superior court with three judges of general jurisdiction, sitting at Caracas. This was subordinate to the supreme court at Bogota. The intendant held a court which was inferior to the superior court. It had jurisdiction, among other things, in treasury matters till 1825, when the prefect's court was established in its stead. Still the intendant seemed to exercise an authority in that behalf not well defined.

Such was the governmental situation in 1822.

The last three invoices had been purchased by Torres after April 1, 1820. Whose agent was he then, Venezuela's or Colombia's? Were liquidation and payment to be made at Caracas or Bogota? These were questions then as well as now.

The four accounts, appended to this opinion, were made out against Colombia.

There were three liquidations of these accounts current, more or less complete and correct.

The first was in 1822–'23, by Idler and associates through their attorney-in-fact, William Duane, a distinguished citizen and editor of Philadelphia, with the Colombian Board of Liquidation at Bogota, established under the law mentioned. It was interrupted by the arrival and interference of an agent of the associates, and by the Venezuelan intendant, to whom Duane had first gone, and who, after some delay, had disclaimed jurisdiction of the accounts, and stated that Bogota was the only place of liquidation and payment. He now asserted the "exclusive faculty" of settlement at Caracas by custom-house allowances—an assertion recognized and acted on then, it seems by the Colombian authorities. So far as Duane had proceeded, there was shown a balance due the contractors of $104,412, for which a certificate was issued by the board, but nothing ever came of it. The other two liquidations were made late in 1824; one by Idler (who had gone out to Caracas in May, 1823), with the Venezuelan intendant, Escalona, showing a balance due the
148 contractors, including interest at 6 per cent., to its date, November 21, of $164,763.89; and the other by the associates, without Idler's authority, it is claimed, through their attorney-in-fact, Henry Ogden, with the board of liquidation, at Bogota, showing a balance, including interest to its date, December 31, of $119,265.84 due them, and $38,076 (estimated as of that date from their balance) due Idler; in all, $157,342.01.

After Ogden's settlement Idler, denying its legality and correctness, authorized his attorney-in-fact, Santos Michelena, June, 1825, at Bogota to receive his share. The amount due him thereunder was calculated by the board of liquidation with interest to June 25, and found to be $38,192.72. This sum was paid Idler by drafts of the Colombian government on London. The associates were also paid the amount found due them, the payments amounting in all to $157,458.56.

Copies of these liquidations are also appended hereto. There was a fourth in 1829, attempted at Bogota by one Vargas, but as it seems to have been unauthorized, it needs only to be mentioned.

The two liquidations of 1824 pertained to the four accounts current.

Idler, it seems—just when the record does not reveal—but after his liquidation, added to his account some items of charge, unnecessary to be detailed, against the government on account of damages and correction of errors. These did not properly pertain to either of the four accounts current. The principal one of them was for $53,781.63, damages for alleged breach of contract in respect to Barinas tobacco, again to be recurred to.

These added to the balance—difference between liquidations—with interest, amounted in 1827–'28 to near $80,000. When President Bolivar was in Caracas in that year it would seem that the Idler and Ogden liquidations, with alleged "undue rebatements and

substantial errors" of the latter pointed out, including the omission of an item for demurrage of $6,336, together with the damage item for the non-delivery of the Barinas tobacco, were laid before him. What resulted is certified by Clemente, May 13, 1833, the former Venezuelan plenipotentiary and agent, at Philadelphia, then a major general in the Venezuelan army:

"I further certify that the president, Simon Bolivar, examined the said documents carefully, and decided that the claims should be paid at Bogota, where the general treasury was; and His Excellency promised to see the said payments made in full, according to the contracts * * * and ordered Mr. Idler to go to Bogota, for which city His Excellency himself started on the 5th of July, 1827. Mr. Jacob Idler also started for that city, and had it not been for the unfortunate events which destroyed harmony in the Republic, he then would have been paid."

It will be borne in mind the intendant exercised his functions under and as "the natural and immediate agent" of the President. The latter's action, therefore, in treasury (as in other) matters had all the legal efficacy throughout the Republic which the intendant's had in his own department.

Idler went to Bogota as directed in 1827. After some delay because of suits instituted against him by endorsees of the
149 London drafts received for the Ogden balance, as above stated, which had been returned protested (and on account of which his losses were heavy—one letter says three-fourths of the whole), he began the liquidation of his account.

Finding need for some documentary evidence which was at Caracas, he returned to that city for it in May, 1828. Soon after his arrival there, as it would seem, he was sued in the prefect's court by the treasurers of the Venezuelan department for a balance of some $37,000, alleged to be due the government because of overpayment at Bogota and of failure to receive credit for sums paid.

The record touching the institution of the suit and the pleadings being meagre, much in this respect is left to inference. Idler, it would seem, set up his account showing the balance alleged to be due him as aforesaid, and asked its allowance and payment.

May 28, 1828, the following order was made in the case by the intendente and his asesor:

"For the better settlement of this claim of Mr. Jacob Idler against the government, and in order to render easier the study of its merits, bringing to it light and an intelligent consideration, Señores Vicente Aramburu and Elias Mocatta are hereby appointed referees. In case that both gentlemen should find themselves unable to agree, they shall have authority to appoint, upon consultation with this court, a third referee or umpire. The referees are hereby given the power to call for papers and documents, and to ask all other information needed, either from the treasury, Mr. Forsyth, Mr. Idler, or Señor Santos Michelena, who was attorney for the latter at Bogota; and they are particularly recommended to make their report as early as practicable.

"Let notice of the above be given to Messrs. Idler and Forsyth."

Forsyth, the old agent, whom Idler had lately sued in attachment at Bogota, had promoted the suit.

Notwithstanding this suit Idler, who had been put under bonds of $40,000 not to leave Caracas till its termination, seems not to have given up thought of securing a liquidation still at Bogota through Bolivar. Accordingly he memorialized the president September 28, 1828, on the subject, setting forth his balance then as amounting with interest to $81,386.

The secretary of the treasury replied November 5:

"His excellency (President Bolivar) has directed me to say that the government acknowledges the justness of your claim, but that the present circumstances of the treasury do not permit its payment. You are, therefore, to wait some time further in the assurance that very soon you will be paid."

Meantime the intendant issued the following, dated October 23:

"I must for the sake of precaution delare the following: It is absolutly necessary that this intendancy write communications and orders to the authorities of this city and of the ports of Cabello and La Guayra and to all authorities, civil, military, and of high police, not to permit his (Idler's) departure over the sea under any pretext whatever; further, to notify him personally not to absent himself from this city till the results of the pending operation with the government are known, and, finally, to give communications to the treasury of Bogota, and (of?) the state in which this affair is now existing, so that all liquidation and payment of his accounts be suspended."

This was followed by an order of the same officer, November 6, in these words:

"Mr. Idler is to be notified that he shall not absent himself without having secured the result of this lawsuit."

No further attempt was made by the now defendant Idler towards securing his demand from Bogota.

On the 14th of January, 1829, the referees above designated, not having served, the intendant entered this order:

"Let the record in this case be referred to the treasurers (there were two) with instructions to make an examination and liquidation of the accounts; the said examination and liquidation to be made with intervention of Mr. Jacob Idler and Mr. Samuel D. Forsyth."

The treasurers responded in the following report, and at about the time, it may be worth while to note, of Venezuela's declaration of secession and independence:

"To his lordship the intendant:

"In strict observance of your lordship's decree of the 14th of January of the present year, on the examination and liquidation of the accounts of Mr. Jacob Idler and associates with this State, we have formed the annexed statement, having before us, for that purpose, the principal judicial proceedings together with all other annexed or connected therewith:

"It appears from the whole, that the aforesaid gentlemen have

secured, over and above what was due to them by the several contracts entered into with this government, the sum of $37,795.22, as the same is evident by the comparison between the credit and debit; for the recovery of which your lordship will dictate such orders as you may think the most expedient. We must also remark, should the same hereinafter be necessary, that what this treasury department has done, has been established entirely on the documents that it has examined; from which it is inferred that there must be other former documents to refer to. In consequence of which we are of opinion that the whole proceedings must be sent back, together with everything done in the premises, to the first court where they took their origin, in order to rectify the first operations, Mr. Idler paying or securing previously what he lawfully owes. For by the said statement it is evidently proved that he has received the above said sum.

"However, your lordship will please to direct whatever you may deem the most just."

The chief of the items, unnecessary to be enumerated, going to make up this sum was one for $21,285, relative to French muskets, to be explained further on.

151 Thus the issues were made up, each party having fully set out his account.

Thereupon, January 8, 1830, the prefecture or treasury court ordered that—

"This case be delivered to Señor G. B. Sprotto, in order that he, as umpire, may settle the question arising out of the disagreement between the liquidation made by the treasury and the liquidation made by Mr. Jacob Idler."

Seventeen days afterwards, Sprotto returned his award in writing in favor of Idler for $72,346.34, including interest at 6 per cent. to June 25, 1825.

The items of debit and credit, with the interest added as to each, were all set out and a balance struck. It would seem (see letter of council of government, 1834, hereinafter referred to) that by agreement of parties the whole accounts were gone into irrespective of the liquidations.

Here it may be well to observe that Venezuela having separated herself from the rest of Colombia resumed her independence January 1, 1830. Her reorganized judiciary, under the constitution of September of that year, was substantially as before, with a supreme court of justice added, consisting of a president judge, and three associates, with a fiscal or attorney general. The treasury court was now to be presided over by an officer learned in the law called juez de letras. Its judgments in treasury matters were required to be affirmed by the superior court *in consulto* before becoming binding.

On August 31, 1830, a short time before the prefect was succeeded by the juez de letras the prefecture, in accordance with the prayer of the treasurers before quoted, entered this order:

"Upon consideration of the representations of the auditors (conta-

dores) let this expediente be forwarded to the secretary (of the treasury) in order that if it seems proper to the government it may be sent up to the commission of Bogota, so that, after examination of the documents appended thereto and of the observations made by the general treasury and by the tribunal of accounts, the said commission may again liquidate the amount of Messrs. Jacob Idler and his associates; and in the meantime let Mr. Idler give bonds for the $37,795.22 of the balance now standing against him, or let him file the original bills of exchange drawn in his favor against the English loan."

The order was not complied with, but, August 25, 1831, the treasury court confirmed Sprotto's award. Its action, objections to which had been filed by the treasurers, was disapproved, and in July, 1832, José Cadenas was appointed and qualified as revising umpire. In September of the same year he filed his report of great length. Every item or point of difference was taken up and weighed, and his conclusion stated with reasons therefor. He found a balance in favor of Idler for $70,520.11½, including interest as before to June 25, 1825. Thereupon the following order was entered by the treasury court:

152 "Let the foregoing award be communicated to Mr. Jacob Idler and to the counsel for the State (ministerio fiscal), and if desired by them let also the record of the proceedings be communicated to them."

Both parties assented in writing to the entry of the award. No objection seems to have been made to it from any source. On September 18, 1832, that court rendered this judgment:

"Administering justice in the name of the Republic and under the authority of law, it is hereby declared that the public treasury is responsible to Mr. Jacob Idler for the said sum of $70,520.11½, which shall be paid him in the manner and in the form that the supreme government may determine upon. And the said Idler shall apply for the payment of the said amount to the said supreme government and file before it a copy of this decision."

And on October 1, 1832, the case being brought, in course, before the superior court, it, after reciting the foregoing judgment and the action on which it was based, adjudged as follows:

"Administering justice in the name of the Republic and under the authority of law, it is hereby declared and adjudged that the decision of the treasury court (brought up in consultation) is approved of and affirmed.

"Let the record be returned to the treasury court with the proper certificate."

Pursuant to the judgment Idler applied for payment. He was refused by the secretary of the treasury on the ground that the judgment was a nullity, the inferior courts having no jurisdiction of the case—only the supreme court of justice being vested, under the constitution with authority to try it.

Under a system there prevailing, the question was taken before the supreme court of justice, and decided adversely to the govern-

ment, December 6, 1832. The court on a review of the case from its inception, found and adjudged as follows:

"The supreme court, therefore, considering the stage reached by this case of liquidation of accounts, does hereby find and hold that the liquidation made settles forever this matter, and that there is no foundation of law upon which to base the plea of nullity for want of jurisdiction which has been set up, for the following reasons: First, because there has been no dispute about the validity of the contracts, which is the case in which, under No. 5, article 147 of the constitution, this supreme court could have exercised jurisdiction in the first instance; second, because both parties have consented to have the case settled as it was, without at any time having set up the plea of want of jurisdiction; and, third and last, because, under the said law of May 1st, art. 86, the juzgados de letras have full and ample power to take cognizance of and decide all cases in which the treasury is interested, either as plaintiff or defendant;

"Whereupon, administering justice in the name of the Republic and under the authority of the law, it is hereby declared and
153 adjudged that the pleas of want of jurisdiction and nullity raised by the executive should be, as they are, overruled; and that the claimant has his right free to act as is proper in the condition of the case."

Resort by the treasury was then made to the council of government, an advisory executive body of nine members embracing the vice-president and members of the cabinet. On March 1, 1833, it adopted this resolution:

"Resolved by the council, That the government be advised not to issue any warrant for the payment by the treasury of Venezuela of the sums which Mr. Jacob Idler has been adjudged to be entitled to recover, (but) to suspend the payment of the said sums, and to reserve the right of the said Jacob Idler to present his claim when the plenipotentiaries who are to be appointed to make the proper division or apportionment of the debt of Columbia shall have met and commenced their labor."

Again the case went before the supreme court of justice to test the validity of this action, when on the 25th of April, 1833, it decreed that—

"No attention should be paid to the resolution," * * * "because otherwise the validity and strength given by law to the final decisions of the courts of justice of competent jurisdiction, upon full knowledge of the facts and the law of the case, and in faithful compliance with the precepts of law, would be weakened and destroyed."

Idler, still unable to secure payment, returned home after an absence of ten years, and applied to the President of the United States for relief.

Then began the diplomatic history of the case, not necessary to be gone into. Suffice it to say, almost every, if not every, administration from Jackson's to Grant's contributed to it, under the almost constant stress of urgency by the contractors or their descendants.

Pending the representations of the American chargé d'affaires at

Caracas, the Venezuelan government applied, January 14, 1836, through a fiscal, specially appointed in the place of the regular fiscal for the occasion, to the supreme court of justice for the benefit of the ancient remedy of *restitutio in integrum* in the Idler case; that is for an order to annul the judgment and proceedings referred to so far as should be deemed beneficial to the government. It is proper to note that in 1834–'35, the government through its council of government and treasury, had, without notice to Idler, addressed communications to the supreme court of justice, on the subject, in criticism of the judicial action had, and in rediscussion of the questions involved and decided in the case. In one of these letters covering 67 foolscap pages, dated June 27, 1834, but not, it seems, transmitted till September, the court is told that its final decision of December 6, 1832, affirming the jurisdiction of the treasury court, "only proves that it never entered into the examination of the documents, nor gave due attention to so important a case." In another place: "In view of the result reached * * * no one could fail to attribute the lack of success to inattention or lightness of mind of the courts." Of this communication the fiscal *ad hoc* in his application to the court says:

154 "The analysis of the proceedings, which is found in the report of the council of goverment, transmitted to your most excellent court on September 18th, 1834, was made upon examination of the judicial record, and of all other documents referred to by it, and it is so extensive, so correct, so methodic, and so enlightened in everything regarding the facts that the undersigned feels himself relieved from the necessity to report the results of the examination which he made by himself."

Two of the four judges of the court excused themselves from sitting in the hearing of the application—one because of his former action, the other for cause not stated. The two remaining judges filled their places by appointment from the Caracas bar for this case, February 1–5, 1836. The tribunal so constituted, on the 27th February, 1836, issued this order:

"Considering that, as it appears from the statement of the attorney fiscal applying for the benefit of '*restitutio in integrum*' against the sentence of September 18, 1832, confirmed by that of October 1st of the same year, in virtue of which a balance is found in favor of said Jacob Idler against the State, it appearing from the proceedings that he is absent from the country, without anything having been said as to his earliest return, and that the resort appealed to constitutes a new action or instance in which he must be heard, let him be summoned through the Gazette in order that, within sixty days, he may appear in person, or by proxy under instructions or retainer, subject to the orders which may be called forth; and, without prejudice of what has been said, and not to delay the course of this business, Dr. Felipe Fermin de Paul is appointed to temporarily act as attorney for him, keeping in mind that it appears from the record of the proceedings that this latter has counselled and assisted him in the preceding instance.

June 7, 1837, the supreme court for the case issued letters rogatory so called to the United States district court at Philadelphia.

"Requesting that notice be given to a certain Jacob Idler, residing in the city of Philadelphia (the son of Jacob Idler), that he be and appear by himself or by his attorney before the said supreme court of Venezuela at the city of Caracas, within seventy days, in a certain suit instituted or promoted against him by the fiscal attorney of the said Republic for the reversal or *restitution in integro* of a sentence or decree given in his favor and against the treasury of Venezuela."

The notice actually reached Idler only twelve days before the expiration of the time limited for his appearance, when there were no means of reaching Venezuela in time. He did not appear, or authorize any one to appear for him in the case.

The supreme court for the case rendered a decision, November 4, 1837, on said application, denying its allowance for want of original jurisdiction to grant the remedy. It held: * * *

"This supreme court has, therefore, reached the conclusion that the right and power to grant the remedy of *restitutio in integrum*, in the first instance, does not belong to it. Law 3, tit. 25, 155 partida third, provides that the action by which the nullification of a judicial decision, through the remedy of *restitutio in integrum*, is sought for, must be brought before the same judge who rendered the judgment. The juez de letras of this city was the one who rendered the decision against which the remedy of *restitutio in integrum* is now invoked, and the superior court was the court which approved that judgment.

* * * * * * *

"Whereupon, administering justice in the name of the Republic and under the authority of the law, it is hereby decided that the jurisdiction over this new action or incidence of *restitutio in integrum*, invoked by the lawyer acting as fiscal, belongs to the courts which rendered the decisions against which the remedy has been invoked (*corresponde a los tribunals que han librado las determinaciones que causan el reclamo*); and, therefore, let the record be returned to the superior court of the second district, a copy of this decision being left here. And let the proper notice be given to the executive."

Following this, the superior court of Caracas, if the opinion of the supreme court for the case can be looked to by us under the circumstances as establishing the fact, rendered a decision—

"Granting the remedy of *restitutio in integrum* against the decisions of September 18th and October 1st, restoring the whole subject to the condition in which it was on the 31st of August, 1830, and condemning Idler to pay the judicial tax and a portion of the costs."

On appeal, the opinion recites, from this judgment of the superior court, taken by the attorney so appointed and joined in by the acting fiscal, the supreme court, on consideration, affirmed the judgment in these terms:

"In consideration of the above, administering justice, and under the authority of the law, it is hereby adjudged and decreed that the

decision against which this appeal was taken is affirmed in every respect.

"Let the record be sent back to the court below, after a certified copy of the present decision is made and filed in the chancellor's office."

No record of the decision or proceedings of the superior court in this behalf has been presented to the commission; nor has there been any showing or allegation of its loss.

It is said outside the record, that the superior court rendered its judgment December 20, 1838.

Twelve days after the action of the supreme court, the council of government "in compliance," to use its own language, "with this decree (that of August 31, 1830, before quoted), to the date of which the case has been restored," sent the case to the Colombian commission sitting at Bogota, under the treaty of 1834, between Venezuela and New Grenada, for the adjustment of their affairs made necessary by separation.

The commission returned it with the statement formulated by resolution and hereinafter quoted, adopted April 17, 1839, to the effect that it had no jurisdiction, and that nothing remained to Idler but to pay what he owed.

156 So ended the proceedings relative to the claim of Jacob Idler and associates before the Venezuelan courts, to be resumed in the high court of diplomacy where the case had received comparatively little attention since 1836.

Opinion.

The case presents a number of questions which have been exhaustively and ably argued on both sides. Among them are:

How far are these judgments to be accepted as binding in the proceedings before us?

Was the court organized for the Idler case in 1836 a legal body; if not, were its judgments valid?

Did the remedy of *restitutio in integrum* pertain to Venezuela as to the Idler case? If so, did the proper court obtain jurisdiction in the premises?

Was the general effect of the proceedings in 1836-'39 a denial of justice? If so, should the judgment of 1832 be allowed to stand; or is it affected with fatal infirmities?

These questions will now be considered.

A State undeniably has the right to determine for itself through its own chosen media what its laws shall be, and what they are, and to administer justice within its own territory (subject, perhaps, to certain humanitarian principles not at all involved here); and its action is entitled to the respect of other States.

The supreme court of justice, being vested with the judicial power of Venezuela, had and has the right to determine the jurisdiction, including its own, of the courts of that country and the state of the law pertaining to matters brought within their cognizance. And its

decisions duly and regularly made are binding upon parties and privies, although citizens of another country.

A judgment duly and regularly made implies jurisdiction of the subject-matter and of the parties, and does not, in a government of law, involve a denial of justice, technically so called. But it does not follow that one State will always enforce or give effect to the judicial decisions of another. Mr. Wheaton says:

"The most eminent public jurists concur in asserting the principle, that a final judgment, rendered in a personal action, in the courts of competent jurisdiction of one State, ought to have the conclusive effect of a *res adjudicata* in every other State, whenever it is pleaded in lieu of another action of the same cause.

"But no sovereign is bound, unless by special compact, to execute within his dominions a judgment rendered by the tribunals of another State; and if execution be sought by suit upon the judgment or otherwise, the tribunal in which the suit is brought or from which execution is sought is, on principle, at liberty to examine into the merits of such judgment, and give effect to it or not, as may be found just and equitable. * * * A foreign judgment
157 is *prima facie* evidence where the party claiming the benefit of it applies to the English courts to enforce it, and it lies on the defendant to impeach the justice of it, or to show that it was irregularly obtained. If this is not shown, it is received as evidence of a debt for which a new judgment is rendered in the English court and execution awarded. But if it appears by the record of the proceedings, on which the original judgment was founded, that it was unjustly or fraudulently obtained, without actual personal notice to the party affected by it; or if it be clearly and unequivocally shown by extrinsic evidence that the judgment has manifestly proceeded upon false premises, or inadequate reasons, or upon a palpable mistake of a local or foreign law, it will not be enforced by the English tribunals The same jurisprudence prevails in the United States of America in respect to judgments and decrees rendered by tribunals of a State foreign to the Union." (Elements Int. Law, 205.)

Vattel lays down the rule that:

"When once a cause in which foreigners are interested has been decided in form the sovereign of the defendants cannot hear their complaints. To undertake to examine the justice of a definite sentence is an attack on the jurisdiction of him who has passed it. The prince, therefore," adds the author, by way of qualification, "ought not to interfere in the causes of his subjects in foreign countries, and grant them his protection, excepting in cases where justice is refused, or palpable and evident injustice done, or rules and forms openly violated, or, finally, an odious distinction made to the prejudice of his subjects, or of foreigners in general. * * * In consequence of these rights of jurisdiction the decisions made by the judge of the place within the extent of his power ought to be respected and to take effect even in foreign countries." (Law of Nations, Bk. 2, § 84.)

His editor, the eminent Mr. Chitty, thought it proper to add a note to this passage, as follows:

"This principle appears to be now settled by the law and practice of nations, but, nevertheless, subject to certain general wholesome rules, essential to be adhered to in order to prevent the effect of partial and unjust sentences and decisions."

An international tribunal, it is believed, should give the full measure of respect and consideration to judicial decisions in the States, establishing it that each would give, under the public law, to those of the other.

Bearing these principles in mind, let us turn to the record of 1836–'39.

The first thing that engages attention is the organization of the court. That there is a facility of substitution as to judges in civil-law courts not found in countries where the jury system prevails may be true. But such change is believed to be always regulated by law. We have not learned of any law authorizing the substitution of two members of the bar for two out of the four judges of the supreme court of justice, made February 1–5, 1836, to try the Idler case. Why any change at all was necessary is not apparent.

158 It is true one of the judges excused himself because of his former action in the old Idler case. But this particular question had not been before the court, either in the old case, or, it would seem, in any other, and of course the court had not acted upon it. And even if it had, that would seem to be a reason why the judges should sit here rather than decline. They were so much the better advised. What, if any, opinion they expressed in answer to the communications by the government in 1834–'35 on the subject does not appear. But it cannot be that a preconceived opinion of the law worked a disqualification in a judge in Venezuela, even as early in her judicial development as 1836!

The constitution of 1830, then in force, provided for the appointment of supreme judges and the filling of vacancies, as follows:

"ART. 146. The judges of the supreme court shall be nominated by the president of the Republic to the house of representatives, three names being submitted for each place. The house shall reduce this number to two, and shall present the number thus reduced to the senate, which body shall name those who are to compose the court. The same order shall be followed in filling vacancies; but if the congress is not in session, the executive power, in concert with the council of government, shall temporarily fill the places until a selection is made in said form."

There was no other provision relative to their appointment or substitution.

On the 18th of May, 1836, three months and a half after the change in the personnel of the court had been made, a law was enacted by the Venezuelan congress, providing:

"ART 14. Whenever any judges are absent, cojudges shall be appointed for each case or business by the remaining judges or judge, if the absence is accidental, and the selection shall be made from among the skilful members of the legal profession that may be in the place, and, in default of them, from among the persons living in the locality who possess the qualifications of representatives in

congress; and where there is a regular vacancy, the selection shall be made by the executive power, and until the appointment of a regular incumbent."

But no appointment in the Idler case was made under this law, and none could have been had it been in force in February, as the regular judges were not "absent."

But to go back a little. On the 14th of October, 1830, the constituent congress, which formed the constitution of Venezuela, resolved that—

"The laws and decrees issued by the congress of Colombia that have been in force up to the present time, and which may not be contrary to the constitution or laws sanctioned by this constituent congress, shall continue to be observed in the judicial order."

The law of Colombia then in force in "the judicial order" on this subject appears to have been embodied in the following parts of the judiciary act passed by the Colombian congress April 13, 1825, to wit:

159 "CHAP. IV.

"*Of the Judges of the High Court and of the Superior Courts of Justice.*

"ART. 34. When, on account of death, resignation, removal or any other cause, there should be a vacancy among the numbers of the high court, the court shall immediately apply to the executive power through its president, in order that the vacancy may be temporarily or permanently filled pursuant to the constitution. In the first case, the executive power will fill the vacancy within not more than six days."

"§ 1. In the cases of this article regarding the superior courts, these will immediately advise the executive power, through its president, that he may fill the vacancy temporarily, and the high court, in order that it may propose to the executive power for a permanent appointment.

"ART. 35. The executive power will appoint temporarily those who are to act as substitutes of the judges attorneys general; not only in the cases of the preceding article, but also in those of sickness or absence exceeding fifteen days, and in those of suspension.

"§ 1. These temporary and alternate appointments shall never be made in behalf of permanent fiscals" (att'ys general).

"CHAPTER VI.

"*Provisions Common to the High Court and the Superior Courts of Justice.*

"ART. 87. In the cases of disqualification, of disagreement of opinion among the judges, and in those of a challenge (of a judge) to complete the required number of judges, if there should be no magistrate qualified to act, associate judges will be appointed by absolute majority of votes.

"ART. 175. * * * The high court and superior courts, the presidents of these tribunals, and the superior judges shall not exercise other powers than those which are assigned to them, and the jurisdiction of these courts and tribunals shall be limited to the cases prescribed by this law."

It occurs to us to observe in respect of this act:

If it was in force in Venezuela in 1836–'37, under the resolution quoted, as seems to have been the case, the action of the government in appointing (as was done) a temporary fiscal for the Idler case in the supreme court in place of the permanent fiscal was illegal, being in violation of the last clause of art. 35.

The provision relating to the filling of places on the bench by judges, required for an appointment the concurrence of an "absolute majority of votes." In the Venezuelan court a majority was three, whereas two made the appointments in the Idler case. As the supreme court for the case was not therefore constituted under this act, it is unnecessary to consider whether its provisions extended to such a case. It will be seen that under the Colombian law the
160 judges appointed, the integrity of the regularly constituted court could not be disturbed. Under the action had, it was otherwise. The law therefore was not only not followed, but its principle was violated.

The act of May 18, 1836, was amended by an act of May 2, 1838, and that again March 23, 1841, and the cases in which substitutions might be made on the bench were defined with particularity. This fact is stated, in connection with the provisions referred to, in support of the belief that the courts in every detail of organization and for every contingency were regarded, and were, in fact, the creatures of positive law, both in Colombia and Venezuela. And how could it be otherwise in a government of law? If courts can be constituted unauthorizedly, so can the executive; so can the legislature. Constitutional government would thus be speedily ended.

Counsel for Venezuela, not asserting legislative authority for the appointments, seems, if understood, to regard this method of procedure as not new in common-law countries even, and instances the courts of assize under the statute of Edward I. But with his high respect, it seems to us the analogy is wanting. The assizes, more nearly analogous to masters in chancery appointed for special purposes, sort of aids, as it were, to the courts at Westminster for collection of facts in cases pending before them and for other subordinate purposes, were established by law, not a law decreed for a particular case, but by a general law of the realm for all cases.

The difficulty is not that the court at Caracas was filled by members from the bar for this case, or that two judges made the appointments. But that this was done without the authority of law. If such a proceeding has a parallel in common-law jurisprudence it has escaped our notice.

Venezuela could of course constitute her courts as she desired, but having established them, it was Idler's right, if his affairs were drawn in litigation there, to have them adjudicated by the courts constituted under the forms of law. There are instances where the

action of tribunals presided over by *de facto* judges, acting under color of authority, has been upheld upon satisfactory grounds, but we think the doctrine would not apply in such a case as this. If the Colombian law of 1830 was in force when the court was organized for the Idler case, as seems to have been the fact, the judges were prohibited from exercising any "other powers than those which are assigned to them," and as the power of appointment was not among those assigned to the minority of the court, the acts of the two judges in appointing the other two *ad hoc*, were not only not under color of law, but in violation of its express provisions. A body so constituted could not have legal validity. Its acts could not bind absent parties. They would be utterly void. Had Idler appeared, and consented to the jurisdiction of the improvised tribunal, a different aspect would be presented, and perhaps a different question.

But, for the purposes of this discussion, let us assume the legality of the court, without, however, subscribing to the doctrine that "natural justice has nothing to say against tribunals thus constituted."

161 Venezuela, to avoid the judgment in favor of Idler for $70,520.11½ in 1832, asserted, in 1836, her right, by succession from the Spanish king, to the ancient remedy of *restitutio in integrum*, and the supreme court sustained the assertion, so far as it had jurisdiction of the case.

By the Roman law a right was given persons during minority and for four years thereafter, on due application and hearing, to avoid contracts and transactions to which they became parties, or with which they were connected during their minority, and to be restored to all things lost thereby, when restoration was shown to be for their benefit. The right, taking its name, it would seem, from that of the writ under which it was enforced, and which succinctly defines its own meaning, was called *restitutio in integrum*. It seems not to have been a right attaching merely to the person, but one inhering in the contract or transaction itself. It was assignable and descendible. It extended to judgments in civil and criminal cases. But we have not observed that it pertained to a judgment unless, also, to the cause of action on which it was based.

This right or benefit was at length extended to corporations, the church, and the king. But in all such cases application for its enforcement had to be made to the proper authority in due form within four years of the transaction to be avoided. There was one unvarying exception or bar to the enforcement of the right by one recently a minor, namely: "When, after having become of age, he either expressly or tacitly approved of the transaction." And it is believed the principle was of universal application wherever the right prevailed. An assent to the transaction once completed by a person enjoying the right and competent to assent was a bar to the remedy. (See Mackeldey's Roman Law, §§ 228 *et seq.*, and authorities cited.)

For centuries after the Roman Empire the right was recognized in civil-law countries, among them Spain.

It was this minor's right or remedy which the Venezuelan government sought wherewith to defeat the Idler judgment.

Were it our province and necessary to determine whether that royal prerogative passed from the Spanish king to the Venezuelan Republic, the very lucid arguments of learned counsel would, not improbably, render the task a comparatively easy one. But we do not feel called on to enter so comprehensive a field of inquiry. The question here is not so broad. Let it be conceded, for the argument, the right succeeded generally to Venezuela; it does not follow that Idler was affected.

A moment's reflection will show the benefit was not universally applicable to Venezuela's contracts, and that her courts were powerless to make them so. A contract or transaction subject to the right had implied in it a condition of defeasance and restoration at the option of the privileged party. It was as though it had written in the body thereof that the minor, or king, or other favored person reserved the option to disaffirm and annul it partially or altogether, and have restored him all things lost or parted with on account thereof. Could such a right in Venezuela, however fully possessed by succession, affect her contractual or other obligations with
162 other States? Had her treaties implied in them any such condition? And was the case in anywise different as to contracts with citizens of such States made therein, where the right was not in vogue?

These were North American contracts, made at Philadelphia, where the right did not obtain. When Venezuela, so to say, came there to enter into them, she came, as would Great Britain or any other person competent to contract, with not a privilege less, not one more. Her right of *restitutio* she left behind her. The Philadelphia contracts had no condition of defeasance implied in them. When sent to Venezuela for execution, none were added. No power there, judicial or other, could engraft it on them. Therefore, as to those contracts themselves, it is perfectly clear Venezuela had not the right of *restitutio in integrum*. Unless, consequently, the law was that the right pertained to judgments when it did not to their bases, these legal proceedings cannot be upheld, even if otherwise valid.

To assert such to be the state of the law is to say that Venezuela, as to the contracts, was an adult, full grown, and stalwart, but as to their enforcement, a—minor! Such a condition, under the ancient Roman law, would seem to have been an impossibility. While the minor's right might pertain to contracts and not to judgments upon them, it is not perceived how the converse could be. If the contract itself were for any cause without the scope of the law's operation, as, for instance, if it had been affirmed after majority, or the period had elapsed within which it could be assailed, of course a judgment then upon it must necessarily have been also without that scope. To hold that when the minor's right was extended to the king a different rule applied, would be to affirm that in its transmission it received an important addition—underwent a material change in principle. The onus is upon him who asserts

this to prove it. No intimation of the like from any authority or source has *not* our notice, unless the supreme court must be regarded as an exception.

But looking "through the gauze of mere words" to the substance of its decision interpreted in the light of practical results, it not only held that Venezuela possessed the royal remedy as to the former judgments, but as to the contracts on which they were based also; for, as we shall presently point out, its practical operation was to defeat both.

Had the courts jurisdiction as to subject-matter, and as to Idler, to render the judgments in controversy? If not, they were inoperative and void.*

If the proceeding was an "action upon the record," and not an independent suit, *inter partes*, the right of Venezuela (assuming her entitled to the ancient remedy) to institute the proceeding within the time limited cannot, we think, be gainsaid. It could not be defeated by Idler's absence. Any reasonable mode of notice in that case would be sufficient. The modes adopted would, in our judgment, be all that justice required.

163 But if the action was a separate and distinct one, its subject being merely a judgment instead of a contract, or other particular transaction, then it is just as clear to our minds that the service on Idler being beyond the jurisdiction of Venezuela was not sufficient to obtain jurisdiction of his person, and any judgment rendered against him in that case would be void. †

Says Wharton, Law of Ev., 3d edition, § 803:

"A foreign judgment, as we have seen, is always impeachable for want of jurisdiction; and hence, for want of personal service, within the jurisdiction, on the defendant, this being internationally essential to jurisdiction in all cases in which the defendant was not domiciled in the State entering the judgment."

Whether, in this case, jurisdiction might have been obtained as to the *rem* by some process of attachment or garnishment, need not be discussed, for nothing of the kind was resorted to.

There is some doubt from the language of the court, February 27, 1836, just what its view was on this point. It said the "claim now made" was a "new action or instance" (un nuevo juicio o instancia). And it deemed the case of such a character as that Idler "must be heard," and directed him summoned.

The authorities seem to regard *restitutio* as a "new action."

Colquhoun, who may be taken as representative, says:

"Restitution must be prayed and a formal suit commenced in that behalf." (Roman Civil Law, § 1865.)

---

*Schibsby *v.* Westonholz, L. R., 6 Q B., c. 155; Novelli *v.* Rossi, 2 B. & Ad., 757; Carleton *v.* Bickford, 13 Gray, 591; Kerr *v.* Kerr, 41 N. Y., 272. See also: Furguson *v.* Mahon, 11 Ad. & E., 179; Cavan *v.* Stewart, 1 Stark, 525; Vallee *v.* Dumergue, 4 Ex., 289.

†Bischoff *v.* Wethered, 9 Wall., 812; Pennoyer *v.* Neff, 95 U. S., 714; Hoffman *v.* Hoffman, 46 N. Y., 30; Davidson *v.* Sharpe, 6 Ired. L., 14; Board of P. W. *v.* Columbia College *et al.*, 17 Wall., 521.

Again—

"Restitution may be sought by action or by plea, and in the latter case every judge is competent who has cognizance of the principal matter in dispute, whether he be commissary or umpire; in the former case, however, application must be made to the judge who is competent in respect of the defendant." *Ib.* (See Savigney, Private Int. L., 320; Bar, Int. L., 213–'16.)

In the view taken, it may be parenthetically remarked, that if *restitutio* would not lie as against the Idler contracts themselves, their annullment could not have been accomplished by plea in the old case pending its conclusion; and this fact is an additional argument against a judgment on such contracts being assailable by this means.

The Spanish law and the civil-law authorities cited by counsel for the United States, and not necessary to be quoted here, leave little doubt that with some exceptional cases—wholly variant from this one—where, "irrefragable cause being shown," the judge may *ex parte*, even *motu motu*, grant the relief, the action had always been regarded and treated as an original one *inter partes*, to be brought
164 and conducted as any other ordinary suit. And such indeed may be fairly inferred from the process and opinions of the supreme court, to have been its view.

Assuming the proceeding to have been an "action on the record," and the notice sufficient for all it purported to be, there remains the other question, namely: Whether the action was brought in the proper court in time. It is conceded all round, the supreme court expressly saying, that it must have been brought within four years from October 1, 1832. The supreme court had no jurisdiction of the case in the first instance, as it decided when it returned the record to the superior court, Nov. 4, 1837. There is some confusion arising from the decision as to whether the treasury court or superior court was held to be the one of original jurisdiction. But as no action was ever taken in the former, let us also assume the latter was the proper one. Was the suit begun there within the limited —? In other words, was the case of the fiscal attorney of the Republic against Jacob Idler brought and pending in the superior court of justice of the second district, on the first day of October, 1836? If not, there was no jurisdiction of the subject-matter. What evidence is there that such was the fact.

As stated before, there is no record of this proceeding from that court among our files, and no cause shown for its absence, if it ever existed. There are full records from it in the earlier case. Why not also in this later one? The existence of this record is challenged by counsel for the United States. How must it then be shown? In municipal tribunal a high character of proof is required for this purpose.

"Foreign judgments," says the Supreme Court of the United States, referring to the law, "are authenticated (1) by an exemplification under the general seal; (2) by a copy proved to be a true copy; (3) by the certificate of an officer authorized by law, which certifi-

cate must itself be properly authenticated." Church *v.* Hubbart, 2 Cranch, 187.

In the same case it was held:

"A judgment certified under the private seal of one styling himself to be secretary of state for foreign affairs is not evidence; also, that a translation of a foreign judgment certified by a consul, but not under oath, could not be received in proof of the judgment."

But "where the original judgment record was destroyed by fire, a copy of a judgment duly certified by the clerk of the court by whom the judgment was rendered, is proper evidence." Nash *v.* Williams (Cornet *v.* Williams), 20 Wall., 226.

It would not be contended by any one, we suppose, that the recitals of a record in one court would be received in a municipal tribunal to prove the existence and contents of a record, not shown to have been lost or destroyed, of another court.

It seems to us, in a case like this, the best evidence reasonably attainable should be required before an international tribunal.

The recitals of the supreme court do not come up to the mark, nor does the following, in its final opinion, February 22, 1839:

165 "A comparative study of the dates in which the judicial decisions herein referred to were rendered, and of the date of the petition of the counsel for the State asking for the writ of *restitutio*, will show that the remedy was resorted to, in due time, within the four years provided for by the 10th law, title 19, part 6."

Had the court given dates so that a "study" of them could now be made, the difficulty would still remain, even though they disclosed jurisdiction in the superior court. They are not the best evidence. That is the record (unless shown to have been lost). If there never was a record then, in contemplation of law, the court did not act. It is elementary that a court of record (and this was one) speaks only through its record. And even where that is produced, showing on its face jurisdiction, and the jurisdictional facts stated are denied, it has been held they may be inquired into and disproved.

The Supreme Court of the United States in Thompson *v.* Whitman, 18 Wall., 457, held:

"The record of a judgment rendered in another State may be contradicted as to the facts necessary to give the court jurisdiction; and if it be shown that such facts did not exist, the record will be a nullity, notwithstanding that it may recite that they did exist."

In Pennywhit *v.* Foot, 27 Ohio St., 98, the court said:

"From a careful review of the numerous cases we find the rule now well settled that neither the constitutional provisions that full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State, nor the act of Congress passed in pursuance thereof, prevents any inquiry into the jurisdiction of the court in which a judgment offered in evidence was rendered, and such a judgment may be contradicted as to the facts necessary to give the court jurisdiction; and if it be shown that such facts did exist, the record will be a nullity, notwithstanding it may recite that they did exist, and this is true either as to

the subject-matter or the person, or in proceedings *in rem* as to the thing."

Such is the law in the United States, and, we believe, generally.

If a court's findings in favor of its own jurisdiction were conclusive in cases coming under consideration before international or other tribunals, the question of jurisdiction could never be raised; for its acting at all is equivalent to finding jurisdiction to act.

"An alleged judgment," says Dr. Wharton (Evidence, § 796), "is open to attack for want of jurisdiction; for it is a *petitio principii* to say that it is unimpeachable because it is a judgment, and that it is a judgment because it is unimpeachable."

The evidence satisfies us that the *restitutio* suit was not in the superior court till after November 4, 1837, when the supreme court "returned" its record in that regard thereto. The suggestion—for contention would be too strong a term—that the bringing of the suit in the supreme court, which was without jurisdiction
166 to entertain it, was its commencement in the superior court for the purposes of avoiding a bar, cannot be entertained. It is sufficient to say that before allowing an effect so extraordinary we should require to see the enactment providing for it, and none has been called to our attention or by us found. The supreme court makes no intimation that such is the law, unless the passage quoted can be regarded as such. But constructions involving results violative of familiar principles and courses of procedure, are to be avoided, and we cannot so regard the finding. The fact that the supreme court of its own motion sent the record down to the superior court does not help the matter, for it is immaterial whether the suit was begun there at its instance or not. The question is when and whether it was therein instituted.

The objections to this record is by no means technical. No notice, legal or other, was received or sent to Jacob Idler about the suit in the superior court, the only court having jurisdiction to entertain it in the first instance (unless it be the treasury court, where it never was), as is conceded on all hands. The letters rogatory directed him to appear in the supreme court in a suit instituted there. If the summons was legal, it only gave him notice of what that court in that case—not in another instituted in an inferior tribunal and subsequently appealed to it—might lawfully adjudge. The notice directing him, away in a distant land, to appear in one court when the business affecting his interests was to be done in another, was worse than none at all, for it was misleading. Even if no notice had been required, and one had nevertheless been given, whose tendency was thus to mislead, we are inclined to think the act, from the standpoint of justice, would vitiate the whole proceedings. Receiving the notice in 1837, at Philadelphia, that a suit had been begun against him in *restitutio* in the supreme court of Venezuela in June, 1836, he—charged at most with a knowledge of the law as it was declared to be—could well have said to himself, "I shall not undertake the hazards of a journey, or incur the expense, to appear. The court has no jurisdiction, and cannot grant the prayer of the

government; and it is now too late to bring the suit in the court which had jurisdiction."

But, conceding jurisdiction of subject-matter and of the defendant, was the alleged judgment of the superior court (for what followed is inconsequential except as a consummation of a wrong begun, if wrong it was) binding?

The purpose and effect of the judgment may be judged by results. It set aside and annulled the old record back to the prefect's order of August 31, 1830, before quoted, leaving that to stand in force. That order authorized (whether lawfully or not is now unimportant) the papers and record in the Idler case to be sent to the old commission at Bogota, in order that "said commission may again liquidate the accounts of Messrs. Jacob Idler and his associates." The government at once sent the case away to a (now) foreign jurisdiction, to a new commission sitting at Bogota under a treaty between Venezuela and New Grenada, of 1834, to adjust matters pertaining to the separation. Of course it was not the "said commis-
167 sion" which could "again" liquidate the claim. It shortly answered, through the Venezuelan member, Mr. Michelena, by resolution, to wit:

"That the time within which Idler could have submitted his claim to the commission of liquidation had expired on the 6th of August, 1829, and that as the tribunals of Venezuela had no jurisdiction to make the said liquidation, the commission considers itself without jurisdiction to take cognizance now of this matter, and that the last judicial action taken in Venezuela (*restitutio*) cannot have other effect than to cause Idler to restore to the Venezuelan treasury what he unjustly received under the Colombian government." (Report of meeting of council of government, Oct. 8, 1839.)

The effects the government attributed to the judgment are stated by its representative, Mr. Romero, to the American minister at Caracas July 8, 1840, reaching practically the same end, as follows:

"According to the last recent sentences of the superior and supreme courts, dated December 20, 1839 (1838), and February 22d of this present (past) year, the matter has gone back to the condition it was in on the 31st of August, 1830; that is to say, to the state of the new liquidation ordered by the intendents Mendoza and Briceno (before August 31st), because it was at that stage that the judge of first jurisdiction (juez de letras) unduly retained for the first time (August 25, 1831) the expediente and converted into a judicial and litigious proceeding, what up to that time was treated as an administrative and economic question of the government."*

"Therefore, the government of the Republic is disposed to instruct the general treasury and the tribunal of accounts to proceed to the pending new liquidation, which may be attended by Messrs. Idler and Company in person, or by their attorneys, within the time which will be assigned to them."

The government thus interpreted the judgments as taking the

* It may be noted that this view of the law and character of the earlier proceedings was not entertained by the supreme court of justice on appeal.

case out of the hands of the courts, to be proceeded with in a non-judicial—*i. e.*, "administrative and economic"—manner before its own accounting officers of the treasury, as it might be disposed to direct. That is, in effect, the government proposed to decide the Idler case itself!

The litigation before the courts was put an end to, and thereby the contractor, in so far as they remained unfulfilled (if there were any), were for all practical purposes annulled; for the government's action and reiterated opinion left no room for question what it would do.

We have seen *restitutio* could not reach these contracts. It is believed it never contemplated such results as to judgments.

The supreme court for the case knew—must have known—that the order of Aug. 31 was impossible of execution, and had been from the very day of its entry nearly 10 years before. Its affirmance of the alleged superior court judgment annulling pro-
168 ceedings back to that order, leaving it to stand, could have had but one purpose—to switch the case from the lines of judicial determination; in short, to dismiss it. We have no hesitation in saying the effect of these judgments was a denial of justice.

One reviewing this record, considering the communications about the Idler case addressed by the council of government and treasury department to the supreme court of justice, before the application for *restitutio* was made, asserting the existence of the extraordinary remedy in behalf of the government, notwithstanding its assent to the Cadenas award; the reorganization of the court so as to change its personnel, and the substitution of a temporary fiscal for the regular officer, for this one case, both too in violation of the Colombian statute extended still to Venezuela; the fact that this was the first and the last time the Republic in its own behalf ever claimed a right to the ancient remedy, asserted in the right of succession from the Spanish king, when Spain had abolished it more than two hundred years before, except in a few cases among which the Idler case could not by possibility be classed; the final decree exactly in accordance with the prayer of the treasurers, in their report of May 2, 1829, and the wishes of the government; and the practical outcome, namely: the ending of the litigation and virtual extinction of the contracts so far as they were not yet satisfied;—one considering these things cannot, as seems to us, well escape the conviction that it was the voice of Idler's opponents which found expression in the judgments of 1838 and '39, and not that either of justice or of the supreme court of justice.

A foreign citizen in litigation with a sovereign before his own courts is entitled to no special favors; but even-handed, or, as Phillimore puts it, "ordinary justice," is his right in the eye of the public law. This Idler did not get. The "justice" attempted to be meted out to him, whatever else could be said of it, was certainly not "ordinary justice."

Our conclusion is, from the foregoing considerations, that the proceedings in *restitutio* were, as against Idler, and are, as against the claimants, a nullity. This is the best we can say of them.

The judgment of October 1, 1832, standing as it does unaffected by the subsequent proceedings, will under the doctrine above quoted be upheld unless manifestly wrong.

But it is assailed. Grave charges are made against Idler and associates, which, if true, would disturb its basis. We have deemed it our duty to look into them with care so far as the record here enables us to do so, as well as to examine the objections otherwise urged against the judgment. The supreme court for the case, repeating in substance what the counsel of government alleged, said in its final opinion:

"The most singular thing to be noticed in all that has been done in this case is the manner in which Mr. Idler himself has acted. Good faith, sincerity, and purity can never allow any creditor to liquidate his accounts with two debtors at the same time, even if the accounts recognize the double origin, unless the credits are divided. In the present case Idler, through his attorneys, liquidated his accounts at Bogota, and concealed the true and lawful price to be paid for the muskets.

169 "As some of his claims were disallowed there he came personally to this city and endeavored to liquidate again his accounts before the courts, and recover here what was denied him at Bogota."

As to the double liquidation:

The occasion for the two settlements was evidently a difference between Idler and his associates, dating back of 1823.

Duane, speaking of his failure to get the money on his liquidation, says:

"To my surprise, on presenting myself at the treasury, I was informed there was some difficulty. It was not precisely explained, and perhaps it was a false delicacy which prevented them informing me what I subsequently was told—that Messrs. Kneeland, the partners of Mr. Idler, had sent out a Mr. Ellsworth with powers which so far rendered my agency inoperative. * * * It is not for me to narrate the scandalous intrigues and bad faith of Messrs. Bogarth & Kneeland. This mission of Mr. Ellsworth produced the effect of arresting the whole transaction and preventing my obtaining the whole amount of the liquidation." * * *

"It has been mentioned to me by Mr. Idler that the other parties in the transactions have alleged that I have been instructed by Mr. Idler to remit more than his share of money or assets had I received them, and he requests me to state the facts, which I cheerfully do. During the whole of the intercourse between Mr. Idler and myself, in conversation and in writing, he uniformly directed me to see remitted his own proportional part to him direct, and the rest to the associates in New York." (Document 86.)

This shows a difficulty and its cause.

In May, 1823, Idler went to Caracas to effect a liquidation with the intendant. And afterwards (date not given) the associates sent Ogden to Bogota. These were unmistakably independent movements. The power of attorney to Ogden did not purport to give any authority whatever to deal with Idler's interests.

The evidence leaves no doubt upon our minds that he had nothing to do with Ogden's mission till the liquidation was made; and it is altogether probable that neither Ogden nor his clients knew just what Idler was doing at Caracas. The facts intrinsically support this view.

That they were all alike interested to get the last cent due on the contracts allowed, goes without saying. What motive then could the associates have had in presenting, or he, in desiring or suffering them to present, a smaller claim at Bogota than he himself was urging at Caracas? If there were to be two presentations every interest conspired to make them alike, and up to the last dollar covered by the accounts under liquidation. That they were not alike is evidence of non-intercourse, of independence of action.

That such was known to be the relation and situation between Idler and his associates is shown by the address of the council of government sent the supreme court of justice in September, 1834. On pages 51–'2 of that document is the following:

"Said liquidator (Cadenas) ought not to have confounded with the account of Idler that of his ancient associates. From the 16th of March, 1822, the date of his cited instructions, he gave the order to his attorneys to separate his interest from that of his associates. These agreed likewise to the same (fol. 51 and over [not before the commission]). In consequence of which Bogart and Kneeland named as their special attorney Henry Ogden, and Jacob Idler William Duane [this is a mistake, for Duane went out as the agent of all parties, Bogart and Kneeland paying him $300 in cash towards his expenses (see letter to intendant, Nov. 5, 1822, and doc. 86)], next Isaac Powles, and finally, Santos Michelena. Each one and all acted independently."

It may be inquired how there could be a difference in the accounts, both parties getting their information from a common source—the contracts or books? In this way: Idler was the chief business man in the concern. He had the making of the contracts and supervision of the business. Naturally, he would have an intimate knowledge of detail surpassing theirs. It was this knowledge that enabled him reasonably to preserve to the firm what the others would have lost, and what would not always readily find its way upon the books. Take, for instance, the charge item of duty drafts in No. 4, Idler's liquidation, $24,340.54. He knew the discount should be 25 per cent., and procured the liquidation accordingly. The associates, through their attorney, took them at a twenty-per-cent cut. Here he saved the firm $1,217. So with the item of 553 bales of tobacco in No. 2, he procured the liquidation at $5,419.42, when the government had charged and probably the Bogota liquidators allowed (though there is some uncertainty about it), $8,921. If our surmise be correct, he here saved over $3,500 to the firm. Then, again, his familiarity with the business would enable him to exclude unjust charges. In this way it is easy to see how the liquidations involving unsettled items, made without concert, one with a thoroughly informed party participating, and the other without

this advantage, would necessarily vary. Only where there was collusion or concert of action would there be sameness.

But counsel for Venezuela undertakes to show that Idler's accounts liquidated at Caracas, November 21, are substantially those of Ogden settled at Bogota, December 31, 1824, barring a difference in discount and interest. It will be remembered the balance found due the contractors in the former was $164,763.89, and in the latter, as paid, $157,458.56; difference, $7,305.33.

There are four accounts in Idler's liquidation, the Elena, the Wilmot, and the two Endymion invoices. In Ogden's there are two; that is, his No. 1 contains Idler's No. 1 and parts of his Nos. 2 and 3. Idler's No. 4 and Ogden's No. 2 are the same except a slight variance as to interest. So that the difference between the two aggregates, as is apparent on inspection of the liquidations, pertains to Idler's Nos. 2 and 3.

171 The learned counsel has apparently accounted for this difference, and established the identity of the accounts, liquidated at the two places (Brief, page 39).

His calculation shows the aggregate indebtedness, according to the Idler accounts, shorn of errors of discount and interest to be $157,465.39, while those of Ogden stand at $157,458.57—only $6.82 between them, which is unimportant, as he says, "*De minimis lex non curat!*" But in Idler's liquidation, account No. 3, there are two items of credit to the government, August 6, 1823, one of $1,465.56 and one of $12,385.33, amounting together to $13,848.89, and one charge item of $6,336, May 20, 1821, not to speak of others, not found in the Ogden settlement, which are entirely overlooked in, and left out of, his calculations and process of identification!

How Ogden's liquidation was made up in detail cannot be determined from the evidence sent us; because his No. 1 was formed, as expressly appears from the accounts, by resuming Duane's liquidation where it had reached the aggregate indebtedness of $92,702.93, without giving the items constituting such aggregate, and adding two, and only two sums, aside from interest thereto, namely, one for $291.20 paid Lemon in cocoa, and the other for $7,077.62 allowed for Elena loss (Idler's No. 1). The demurrage item ($6,316), as appears from Duane's statement, was not included in his settlement, and the accounts on their face show the two credits ($13,848.89) were not considered at Bogota. So that no inference to support the charge of double presentation based upon the substantial identity of the accounts can be drawn.

As to concealment of price of muskets.

It is charged that Idler in the liquidation at Bogota "concealed the true and lawful price of the muskets," thereby being allowed $12 each therefor instead of $7.

This seems a strange accusation. How Idler, even if he had to do with the Ogden liquidation, which he had not, could be supposed to have concealed from the government the knowledge of a transaction had with that government itself and at its demand, is difficult to understand. The musket account was of more than three years' standing. For the government to have it at all would be

to have it with the reduction in price noted, that having occurred at the receipt of the arms in Venezuela, the vice-president Soublette himself representing the government in the matter.

But it is unnecessary to speculate. The proof is direct and unmistakable that the board of liquidation knew of this business two years before.

Duane, speaking of the progress he had made in securing a partial liquidation and a certificate therefor, says (document 86):

"I was proceeding to negotiate for the muskets, seeing the strong ground upon which I stood, and was assured by the president of the board of liquidation that no difficulty presented itself to my settling the muskets and demurrage damage accounts."

That charge is the merest gratuity.

172 As to Idler's conduct before the courts at Caracas:

It is charged that Idler, failing at Bogota to have some of his claims allowed, went to Caracas and endeavored to liquidate again his accounts before the courts, and to recover there what was denied him at the former place. It would be difficult to put more error in as few words.

Idler's items in contention, except perhaps the single one of $291.20, a charge-back of an alleged error, so far as not allowed by them, appear not to have been before the Bogota liquidators at all. In February, 1825, he endeavored to have them brought before the board, but was too late and it was not done. As for going to Caracas "to liquidate again his accounts before the courts," the fact was otherwise, we might say oppressively so.

It was not Idler, but the public authorities who instituted the liquidation before the courts at Caracas. They compelled it. The counsel of government, in the very communication sent the court, 1834, before referred to, say (page 6) on this subject:

"The affair was reputed concluded not only by the government but likewise by all the associates, when, at the commencement of the year 1828, the intendancy of Venezuela observed that the liquidation which had been made at Bogota * * * was on the one hand that Idler and associates were unjustly credited, and upon the other not debited or charged for various sums which had been received at the custom-house of La Guayra. It was for this powerful reason that said intendancy opened the subject to a continuation."

After the subject had thus, by the government, been opened up "to a continuation," Idler did not object to going to Bogota. On the contrary, as has been seen, he wanted to go. The same communication says, page 11:

"Nor did Idler himself make any opposition at first that the documents should pass to the government at Bogota, so that in his writing (folio 78) he only asks that this measure should be delayed until he could present other observations and documents which he solicited for the purpose. So that the only objection made was his refusing to give the security which was demanded of him that he might leave this city to make a new arrangement of his accounts at that capital."

What was the security required? Either that he give "bonds for

the $37,795.22 for the balance now standing against him," or that he "file the original bills of exchange drawn in his favor against the English loan." The bills he had sold, and he had been sued on them as endorser in Bogota. Their deposit was an impossibilty to him. To have given bonds in a strange land for the payment of that sum of money was probably equally out of the question.

The order was practical prohibition to him. It has already been seen that before this, direction had been sent to Bogota by the intendant stopping the liquidation there.

173 It seems from the same communication that he, being compelled to go into the subject—for the government itself was attacking the Bogota liquidation—desired "that this operation should be made anew," and the public authorities assented.

Under the circumstances, how the complaint under consideration could have been made against Idler on any hypothesis of intelligence and just purposes, passes our understanding. The only alternative left him, short of suffering what he manifestly regarded gross injustice, was to liquidate and litigate the best he could in the Venezuelan courts.

It is said he received at Bogota sums that had been paid him at Caracas. It is a sufficient answer to this to say that every dollar paid at Bogota was credited on his account, which was adjudicated.

There is this appearance, however, of truth in the charges of concealment and double payment, that should be mentioned. There were two liquidations in fact. There were credits on Idler's that were not on Ogden's. Idler and the associates took, through their attorneys, all that was found due on the latter liquidation without deducting such credits. But it must be remembered that Idler rejected the accounting as incorrect and unauthorized. He evidently received the amount found in his favor as so much on account; and it may be reasonably supposed that when the associates learned of the considerable amount still claimed to be due not included in the liquidation and not known to them at the time, they received their payments as on account also. The government could not be hurt if it received credit for all that was paid, as it did, especially as it did not regard itself bound by the liquidation, but consented "to have the case settled as it was."

It is charged that these later items were an afterthought; that had they been honest they would have been earlier presented. Not necessarily so. There had been long and vexatious delay about the payment of a substantially uncontested account current, with results of great hardship.

One can easily see that business prudence, under the circumstances, might have suggested the delay for a season of a claim for damages entirely well founded, so as not to be the occasion for further procrastination. The more probable reason for delay as to the Barinas tobacco claim is, that Idler hoped all along to get the tobacco. In fact, promises were made to him to that effect as late as 1824. Had they been fulfilled, of course there would have been no claim on this score. There is evidence, however, of an endeavor

to procure the adjustment of these items before the payment of the Bogota liquidation, but it is unnecessary to pursue the matter.

It is sufficient, in fine, to say the evidence before us does not support the charges referred to against Jacob Idler.

There is another matter that should not go, perhaps, unmentioned. The Venezuelan government said to the American minister, in 1840, that there was corruption connected with the Idler judgments.

But it made no specific charges, called to account none of its
174 officers, or furnished any proof. The record is silent otherwise on the subject. Under such circumstances, this charge, never intimated during the long, weary progress of the case, is entitled to no consideration.

Turning now to the specific objections to the judgment:

It is said in substance that the judgment or claim was against the wrong party; that if any one was responsible to Idler it was Colombia and not Venezuela.

Undoubtedly the action was begun by the Colombian authorities, and had the point been made at the separation, what the action of the courts would have been can only be conjectured; but it seems not to have been made. On the contrary, the evidence transmitted shows, as one letter puts it:

"After their separation the government of Venezuela went on with the suit more vigorously than ever."

It was too late after defeat, at the end of 1832, to make the question. It cannot be overlooked, in this connection, that, when it was supposed in 1840 the *restitutio* proceedings had cancelled Idler's judgment and restored in effect the treasury liquidation against him for $37,795.22, which then with interest amounted to over $60,000 Mr. Michelena, the Venezuelan plenipotentiary at Bogota, expressed the opinion, in which the council of government concurred, that the whole sum, when paid in, would belong to Venezuela. Nor is it to be passed by, that the firm with which the same Mr. Michelena was connected, the Brothers Michelena, of Caracas, having obtained in due course of business one of the drafts of the Colombian government for £2,000 on London, with which Idler had been paid at Bogota, and which were returned protested as before told, brought suit thereon in Caracas against the government of Venezuela, and on the 19th of December, 1831, obtained a judgment in the supreme court for $14,008, which Venezuela promptly paid.

In the course of the proceedings the fiscal said:

"When the State (which nominally was Colombia, but actually taken as Venezuela) or fisc enters into any agreement with private individuals, it is and must not be regarded as their superior, but as their equal, because a reciprocal contract equally binds all the parties according to the primitive and constitutional law of every reasonable society"—

A doctrine, had it been applied in 1836–'39, that would have saved this controversy.

It will be noted that Venezuela herein through its courts and treasury, not only, as it would appear in effect, recognized her individual obligations in these transactions by discharging a bill grow-

ing out of them to which on its face she was not a party, but that in her refusal to pay Idler's judgment rendered less than a year later, made a discrimination as against a foreign citizen in favor of her own, a thing prohibited by the public law.

The reason given by the government for this action, to wit, because, "when Venezuela made her last political transformation (1830) it (the bill) had been radicated in the custom-house by the special order of the government of Colombia, issued since the 26th of July, 1829," does not seem to us satisfactory, nor was it the ground on which a recovery was sought, nor that of the judgment of the court.

The suit was brought and the judgment and payment occurred after Venezuela's separation from the rest of Colombia, and before the adjustment of the latter's debt among the constituent States.

It has been held that conditions attached to a grant of land even by a prior sovereign, and which are inconsistent with the policy of an after-acquiring State, will not be enforced by such State. (United States *v.* Vaca, 18 Howard, 556.) It is not perceived upon what principle, in the absence of contract, an order of the Colombian government to pay certain of its indebtedness from the revenues of a particular one of its ports would be operative after that port had passed into the hands of another State.

But waiving all of these considerations and not insisting now on the doctrine laid down by Dana in his notes to Wha-ton (sec. 30, note 18), to wit: That where a State is divided each new State becomes liable for all the debts of the old one, as in case of union of States the consolidated community becomes responsible for the obligations of each constituent—was Venezuela liable as upon contract made by herself? She was not if her political existence became extinct December 17, 1819.

Let us look at this for a moment:

On the 15th of February, 1819, the congress of Venezuela, convoked by Bolivar, was installed at Angostura. There thirty deputies in the body, "nominated by the free part of Venezuela," twenty-six of whom convened and proceeded to organization and business.

On the 17th of December ensuing "the sovereign congress of Venezuela, to whose authority," using the language of the preamble, "the towns and people of New Grenada, recently liberated by the arms of the Republic, have voluntarily agreed to subject themselves," adopted the "fundamental law of the Republic of Colombia," so called, providing a scheme of government or constitution for the proposed State. Among its provisions were the following:

"1. The Republic of Venezuela and New Grenada from this day are united in one single State under the glorious title of the Republic of Colombia."

* * * * * * *

"4. The executive power of the Republic shall be exercised by a president, and in his absence by a vice-president, both named, *ad interim*, by the present Congress.

"9. The constitution of the Republic of Colombia shall be formed by the general congress, to which shall be presented, in the light of

a project, the one decreed by the present congress, and which, together with the laws promulgated by the same, shall immediately be put into execution 'by way of an essay.'"

General Bolivar, who had resigned to this congress his assumed dictatorship of Venezuela, and become, as he expressed it,
176 "nothing more than a simple citizen," was designated by the body as president *ad interim* of Colombia and continued in the chieftainship of the military forces.

Francisco A. Zea, the president of congress, by its authority, in promulgating "the fundamental law," January 20, 1820, issued a manifesto to the "people of Colombia," from which these extracts are taken:

"This work (that of union) so deservedly merited by you is already finished; your political concentration is verified and the fundamental law conferring it, and which, through me, congress offers for your supreme action, will fulfil all your desires, will promote the interests of all, will cement upon an immense and lasting basis your independence, will establish that of South America, and make you a power both strong and solid."

Having portrayed in glowing terms the many advantages and possibilities of Colombia, he exclaims:

"But alas! From what fatality, what cruel destiny is it that this country the first in the physical world, not only — the first, but does not even so much as exist in the political world. It is because you have not willed it; will it, and it is done. Say: 'Be it Colombia, and Colombia it shall be.'"

The recital in the preamble of the act that "the towns and people of New Grenada * * * have voluntarily agreed to subject themselves" to Congress, must be received as expressive of an anticipation rather than of a fact. In his report to Gen. Santander, vice-president and the chief civil magistrate of New Granada, Dec. 31, 1820, the commissioner of the office of the interior and justice, speaking of the "fundamental law" of December 17, said:

"When this arrangement was communicated to Your Excellency, you immediately perceived the advantages and benefits accruing from it. Your Excellency foresaw that a union of forces, an accumulation of resources, must render us formidable at home and respectable abroad: but you would not, however, risk a decree of obedience till you had consulted with the general authorities of the department. * * * This caution was very just and fitting for the consolidation of the association, which, as it contained a solemn fact, required the free, express, and formal consent of all the contracting parties."

The representatives of the provinces, elected pursuant to the call of December 17, so published by Zea, met at Cacuta in May, 1821. To them at once Gen. Bolivar resigned the executive authority that had been conferred on him at Angostura, saying that "he held the presidency *ad interim* from the Venezuelan congress only, and the congress then assembled being that of Colombia, he considered his executive powers at an end."

On the 12th of July this congress adopted the "fundamental law

of the union of the peoples of Colombia," parts of which are the following:

177 "We, the representatives of the peoples of New Grenada and Venezuela, assembled in general congress, having examined attentively the fundamental law of the Republic of Colombia passed by the congress of Venezuela in the city of St. Thomas de Angostura on the 17th day of December, 1819, and considering: 1. That united in one Republic the provinces of Venezuela and New Grenada have all the proportions and means of elevating themselves to the highest degree of power and prosperity. * * * 3. That profoundly impressed with these advantages all men of superior talents and patriotism have urged the governments of the two republics to agree to their union. * * * In the name and under the auspices of the Supreme Being, we have just decreed, and we do decree the solemn ratification of the fundamental law of the Republic of Colombia, just mentioned, in the following terms:

"ART. 1. The peoples of New Grenada and Venezuela are united in a single national body under the express compact that its government shall be henceforth and forever a popular representative one.

"ART. 2. This new nation shall be known and denominated under the title of the Republic of Colombia.

"ART. 8. The debts which the two peoples have contracted separately are recognized *in solidum* as the national debt of Colombia; and all the property of the Republic is responsible for its satisfaction."

The constitution for the new Republic, adopted August 30, differed radically from that proposed at Angostura.

This simple recital, we think, warrants and impels the conclusion that the act of December 17, 1819, while in its phraseology declaring Colombia then formed, was intended and understood to be, and from want of authority in the Venezuela congress, could be no more than, a proposition (with tentative provisions) of union, between Venezuela and New Grenada, which was duly accepted by both provinces July 12, 1821, and the union consummated. Before this latter date, by whatever laws governed and in whatever name acting, each province preserved its legal autonomy and contractual powers. We are not saying that, for certain purposes or even generally, Colombia's existence might not be held to relate back. But we do say that for the purpose or with the result of defeating contracts with either province made before the consummated union in 1821, the political extinction of such province will not be held to relate back also.

On the question of fact whether Torres acted as the agent of Venezuela we see no good reason for finding differently from the courts. He signed himself, in his introductory communication with Idler, July 28, 1820, as the "agent of the government of Venezuela." His powers were quite evidently in continuation of those of Clements. He seemed to recognize that Idler had certain existing rights because of what had been done by his predecessor. For instance, without other allusion to the subject, he said in that letter:

"As the tobacco of Barinas is one of the most productive resources of the government of Colombia, and the merchants of Hol-
178 land are the best judges of this important branch of commerce, I recommend to you the Holland merchants as the best disposed to enter into the views of my government."

Why should he recommend to Idler something about a particular kind of tobacco, unless by some existing arrangement Idler had to deal with it?

This, taken in connection with what Clemente said when the case was before the courts, August 12, 1830, becomes entirely intelligible, to wit:

"The contracts made and entered into between Idler and myself were as follows: First. To pay him for each musket twenty hard dollars, which was the price paid him for them at Montevideo. But afterwards we agreed to reduce it to only twelve hard dollars, if the government should give him the monopoly of the Barinas tobacco until full payment of the contracts."

Otherwise it is obscure and apparently out of place. Before the passage quoted he says:

"On the other hand you are perfectly acquainted with the resources as well as the present situation of the Republic of Colombia."

It was probably because of "the present situation" of Colombia that he signed as the "agent of the government of Venezuela;" and also because of that "situation" that Idler would require the contracts to be made with Venezuela, although under the name of "Colombia." There was no doubt of its power to contract. The right of Colombia to do so was then contingent on what might occur at Cucuta.

While it was natural to point to the resources of Colombia as the probable paymaster (for the union was expected to take place in January after, less than a year), it was altogether business-like to conduct the transactions in the name of one unquestionably competent to contract. We think that Torres, therefore, did not subscribe himself as he did by inadvertence. He did it advised, and well advised at last.

All things considered, we think the objection to the judgment on the score that it was Colombia's debt, if any one's, is not here tenable. Nevertheless, under the Colombian act of assumption of debts aforesaid, and under the general public law, Colombia became unquestionably liable for Venezuela's contracts. This did not free the latter, however, beyond the pleasure of her creditors. The making out and presenting of the accounts against Colombia is not important. There was no other government then to present them against.

It is said the associates were not made parties, and are not entitled to share in the judgment. This, at least, is a technical objection. If the debt was owing, it seems of little importance, before the bar of international justice, in whose name the suit was conducted, so the right ones get the proceeds. Had the associates been made parties, we cannot see that the result for that reason would have varied. Idler always recognized their interest in the claims

and judgment, and it is not apparent how the question now is material.

179 At any rate, objection comes too late. As said by the supreme court of justice, December, 1832, "both parties have consented to have the case settled as it was," and questions as to forms of procedure are of little moment. Moreover, of the near $38,000 alleged overpayment at Bogota, Idler's share was only about $9,000; yet he was sued individually for the whole sum. He answered, recovering over $70,000. Venezuela is not now in a position to allege that the suit was wrongly cast. Had she stood by the Ogden liquidation there would be more reason for this claim, but she did not. She repudiated it. She cannot now hold the associates thereto. It was alleged in argument, supported by references to the record, that the contracts were all, in fact, in the name of Idler. But they are not before us, and we predict nothing on this ground.

The contest in the case finally narrowed down to some five or six items, four of which formed the basis for nearly the whole of the judgment, and these only shall we notice.

The government objected to the allowance of the loss on account of the Elena.

The circumstances connected with this loss are not revealed by the evidence submitted to us. The council of government said in their communication of 1834, that it was occasioned by seizure of the vessel by the United States Government at the instance of Spanish authorities for violation of neutrality laws. Informal inquiry at the State and Naval Departments has failed to elicit any facts on the subject. The statements before us are to the effect that the loss was occasioned by the Venezuelan agent, Gen. Clemente, and that the government, recognizing its obligation to make it good, agreed with Idler to the amount in 1820. These statements stand uncontradicted, and we see no good cause to differ with the courts in respect thereto.

The council of government fell into a singular error of fact in supposing this claim was not liquidated and allowed at Bogota. It will be found by reference to the liquidations in Ogden's No. 1, the original amount agreed upon being $7,087.62.

The item may be regarded in the light of one agreed to and paid.

The charge of $6,336 for the detention of the Endymion, at Angostura, for 198 days from November 3, 1820, was resisted. There does not appear to have been objection to the rate of charge, $32 per day, nor question as to the date the schooner got into port, or as to the time she remained unloaded. The controversy seemed to turn—though the matter is involved in much uncertainty—upon the meaning of the word "arrival" in the contract. The referee said:

"Arrival of the vessel has never meant anything else than the moment of the vessel's having entered the port. If the arrival of the vessel would or could mean the same as ability to make the delivery of the cargo, as the secretary of the treasury understood,

the claim might be made also that it means the day in which the delivery of the cargo was completed. Nothing of this is
180 correct. The day agreed upon was the day of arrival; and whatever is said for the purpose of changing the date is in violation of the contract."

The contract is not here, nor is any evidence preserved, if taken, as to the matter. There is nothing before us upon which we could base a dissent from the view the courts took.

The issue about the musket item of $21,285 arose in this way: The 4,360 French muskets, being the last shipment under the contracts, were objected to after arrival at La Guayra as not being according to contract.

The agents of the contractors, Lemon & Forsyth, agreed with the vice-president to allow all to go at the raduced price of $7 each, except 103, which were to be paid for at the usual figure of $12.

The Bogota commission allowed $12 each for all.

The question turned upon the authority of Lemon & Forsyth to agree to a reduction from $12 to $7. Idler denied their authority, asserting they were, as their power of attorney known to the government showed, mere receiving and delivering agents, and claimed the agreement was that all goods were to be inspected and accepted in the United States before shipment.

The "diploma" above quoted from contained this provision:

"It being understood that we (Venezuela) shall abide literally by whatever they (agents) may have agreed to, without entering into any inquiry or examination, or making any remarks or objections on or to the contracts made by them."

Gen. Clemente's certificate, in testimony, contains this statement:

"The contracts made and entered into between Idler and myself were as follows: * * * Second. That the conditions of the diploma under which I and my successor acted were that all the contracts for supplies made by us in the United States should be finally ended and admitted and liquidated there, and that no alteration or reduction of these terms should ever be made by any authority of the Venezuelan government, it being understood that the articles and effects to be shipped by us were to be examined and received there by us to our satisfaction, as so indeed they were examined and received."

It fairly appears that Lemon and Forsyth were only receiving and delivering agents.

There is also evidence to the effect that these muskets, at the instance of the Venezuelan agent, were examined by a French officer in the United States and pronounced good arms and were accepted, though of different sizes and second-hand in part. It is historically true that at this time the Republic was in great need of fire-arms. Agents were dispatched to other countries for them. The slaves had been given their freedom and were being armed. So scarce were guns that soldiers sometimes went into battle armed only with pikes. It is not improbable under such circumstances that Torres would accept almost any character of arms rather than get none.

181 The statement that the arms were to be inspected and accepted in the United States bears the impress of truth in itself.

The idea that a business man of Philadelphia would send military supplies by the cargo to the seat of war in that country, there to be inspected and perchance thrown upon his hands, borders upon the absurd.

The facts above stated were not contradicted in the evidence, so far as disclosed here. If we were required to find upon the same question, we should, with the evidence before us, find with the board of liquidation and the courts that the agreement for reduction from $12 to $7, each musket, was unauthorized on the part of Lemon and Forsyth, and that the liquidation should be made at the former figure.

There remains to be considered the Barinas tobacco item of $49,160.00 as finally allowed. Idler claimed his original contract provided for the payment of $20 each for muskets; but that subsequently the agreement was reached to reduce the price to $12, in consideration of the government giving him the monopoly of the tobacco grown in the province of Barinas, and known as an article of superior quality, until full payment should be made for all the goods bought; and that it failed and refused to carry out this contract—selling others the tobacco while he remained unpaid, to his damage, $53,781.63. Remembering that indigo, cotton, cocoa, tobacco, &c., produced in Venezuela, were sold or disposed of by the government, and formed a part of its "resources" at that time, we call attention to these sentences in the diploma.

"All of the said contracts which the said agents or commissioners may make, or enter into are beforehand approved of by us as made and entered into in use of the full unrestricted powers and faculties given them by us, faculties and powers which authorize them to deal and stipulate in the name and in behalf of the Republic, and to mortgage her property and her revenues and resources. The said property, revenue, and resources shall be pledged with absolute preference to the payment of the debts contracted by virtue of this authority."

Also to this clause in the "instructions:"

"Fourth. They are empowered to grant the contractors who may take to our ports the above said elements of war, all the advantages that may be deemed just, relative either to preference in the payment, or to the choice of the particular kind of articles produced in the country, or to the amount of being credited to set off customs duties."

It will bear repeating in this connection, that Gen. Clemente, in the certificate referred to, says the contracts made between Idler and himself provided:

"First. To pay him for each musket twenty hard dollars, which was the price paid him for them at Montevideo. But afterwards we agreed to reduce it to only twelve hard dollars, if the government should give him the monopoly of the Barinas tobacco until full payment of the contracts, * * * and that the amount to be

paid Mr. Jacob Idler was to be paid in Venezuela with preference to any other debt, and in hard dollars, if there was no Barinas tobacco."

182 In the part of the evidence which was before the courts transmitted us (and it would seem to be but a small part) there is corroboration of Clemente's evidence, and no contradiction thereof. The contracts themselves as to particular lots not being here we are unable to say whether they contain any modifying provisions. The council of government in its said communication of 1834, expressed the opinion that the delivery of such tobacco under the four several contracts, "never was considered as absolutely necessary," and enter into an argument, quoting brief portions from the contracts in support of that opinion.

But a careful examination of the argument fails to discover to us the correctness of its conclusion. For instance, with respect to the first contract considered, it says (italics ours):

"With respect to the amount of the contract by the brig *Meta* (*Elena*), according to folio 32, *articles 3 and 5 are decisive.*

"The first of these articles says: The government *offers* to pay the balance (all it owed) of 7,067.62 Spanish dollars at the expiration of six months, in ready money or in whatever property of the Republic the creditor (in default of money) should prefer it. The other article, 5th, says: The government *wishes* and *permits* that the sum which is in virtue of the article 3d, of this contract, if it is declared due, can be received as payment made for export and import duties."

Even from these fragmentary portions of the contract (and it gives no other), it would seem that if the offer in article 3 was accepted, Idler, "in default of money"—and there was default—had the right to select the product of payment, which, of course, would have been the Barinas tobacco as being the most desirable.

Article 5 is merely permissory in its terms and effect, and so far from being, in connection with article 3, "decisive" of the question at issue as the council supposes, it is as we view it irrelevant. The rest of the argument, even upon its assumption of facts, seems to us with all due respect equally inconclusive.

Now, that the government had the Barinas tobacco to dispose of every year from 1820 on, the evidence leaves no room to doubt; and that it refused to let Idler have the crops is equally free from question.

The truth is, that after pledging the crop to Idler, it pledged it in London to secure government loans there, as letters from London brokers at that time among the papers show.

The congress of Colombia by an act of 1822, expressly pledged the "resources" of the Republic to the payment of the foreign loan authorized by it, in preference to all other debts, and a subsequent act on this subject, 1823, specially named tobacco as among the resources so pledged; both in derogation of the obligations to Idler under the "diploma" and "instructions." So that he was effectually cut off from realizing under his contract, although hopes were still held out to him for the "next crop" by the intendants.

There was then a plain breach of contract on the part of the government, so far — the evidence before us discloses.

183 What was the measure of damages? Idler claimed $8 a musket, the amount of reduction, would, in strictness, be his due. There were over 11,000 muskets in the last three shipments. His claim would thus exceed $88,000. That was not allowed him. Some half dozen merchants were called on for their estimates. They computed his losses at about the sum allowed, perhaps a little over. There is no other testimony on the subject. The government offered none, so far as appears. While this sum seems to us large, yet we are unable to say its allowance was manifestly wrong.

It had passed the judgment of two referees, amply authorized to take testimony, and, therefore, presumably thoroughly advised, and had received the sanction of the treasury judge and the superior court; besides having the concurrence of the government itself, through its fiscal's written consent to Cadenas' award, through the failure of the treasurers to appeal, and by the direct approval of Bolivar himself.

We have carefully examined the other contested items—comparatively small—going to make up the judgment, and fail to see in any of them a satisfactory reason for refusing its recognition as an entirety.

It will be observed that the decision of the treasury court, which, under the law properly dates from its confirmation, Oct. 1, 1832, is:

"That the public treasury is responsible to Mr. Jacob Idler for said sum of $70,520.11½, which shall be paid him in the manner and in the form that the supreme government may determine upon."

There is no allowance of interest from June 30, 1825, the date to which the referees computed it. There was a considerable sum of compound interest in the award. It may have been for this reason interest after 1825 was not included in the judgment. At any rate, such is the judgment; and we are unable to say it is palpably wrong, either for what it contains, or may seem to omit.

We have carefully considered the arguments in favor of computing interest up to the date of the former award, and then allowing interest on the amount from such date. There is much force in the views presented where former awards are refound. But we feel that course may not be warranted by the interest provision of the treaty, which reads:

"And in the event of interest being allowed for any cause and embraced in such award, the rate thereof and the period for which it is to be computed shall be fixed, which period shall not extend beyond the close of the commission."

But one period here appears to be contemplated, ending at some time before the close of the commission. To constitute two periods, thereby augmenting the interest, would at least be of doubtful authorization. The failure to embody in the treaty Mr. Frelinghuysen's understanding is rather an argument against the view urged than in its favor. Treaties are prepared with deliberation

and care. Neither the omission nor insertion of material matter can be ascribed to inattention. (The Nereide, 9 Cranch, 419.)

An entry can be prepared allowing the claimants the amount of the judgment of the superior court, $70,520, omitting the odd cents, with 6 per cent. interest, that being the rate named in the contracts, from its date, October 1, 1832, to September 2, 1890, inclusive, less the deductions provided by the treaty on account of payments made on the old award, the same to be distributed as per the agreement on file dated March 17, 1868, subject to mesne transfers of certificates according to intervening petitions filed in this case.

184 Copy.

CARACAS, *November* 20, 1833.

Jacob Idler, Esq're, Philadelphia.

DEAR SIR: I received your esteemed favor of 3d of October, including invoice and bill of lading of sundries shipped to me for my account on board schooner Banner, Morgan, master, from Philadelphia, amounting to $285.48c. Spanish say two hundred and eighty-five dollars $\frac{48}{100}$c. Spanish, which I have duly credited you with at the exchange of 25 p. %.

On examination of the goods I found missing one and a half dozen hair brushes, to say half a dozen No. 3 gilt $1.45 and one dozen No. 6. $1–, Said brushes came in three separate parcels of half a dozen each, and I presume that has been the cause of the error, being probably counted as parcels of one dozen.

I am really very sorry that the spades and hoes have not been sent to me, being in demand at present, I do not doubt but that I shall receive them per first opportunity.

On examining the samples of knives and forks I have only found one quality which suits me, which are as runs in the invoice–" 2 dozen three-prong knives and forks large a- $2.12½c. " being the only quality I want, you would much oblige me, by sending me thirty dozens; also thirty cu-ves for coffee, iron wire, the bars or grates not to be wider nor less than the inclosed pattern. I have remitted to Ygnacio Diaz the three German pipes you sent him, and was very pleased with them.

Please receive the compliments of my family, and present mine to our friend Baron Humboldt, and receive the assurance of esteem from your most ob't serv't

(Signed) ALEX. CHATAING.

Turn over.

P. S.—If in case you can procure more hoes and spades, than mentioned in my note to you, please send them to me, I will remit you the difference; do not fail to send me the curves, they must be 18¼ inches in diameter or thereabouts, The knives and forks I also expect.

Copy.

Left with Mr. Alexandre Chateny to collect for account of Jacob Idler—

For Mariano Mova	$16.
Nova Isabel Madris	" 4 "
For I. A. Theabole	" 6 "
" Ygnacio Perves	" 12 "37½

185 En Manos del For Lopes Umeres; del Peston de bienes—

Jose Ma. Pelgron	$232 70
For Jose Rojas	" 200
" Santiago Ibarro	" 136 83
" Covonel D. Ruth	" 323 75
" Manuel Amestoy	" 119 " –

Caracas May 15th 1833
(Signed) ALEX. CHATAING.

Left with Mr. Alexandro Chateng to sell for account of Jacob Idler:

1 Spanish Romana	$16 a $20
1 corn mill	7 a 10

Caracas, May 15th, 1833.
(Signed) ALEXANDER CHATAING.

Copy.

CARACAS, *June 6th*, 1834.

Mr. Jacob Idler, Philadelphia.

DEAR SIR: I received your esteemed favors of 4th & 10th May last, and another addressed to Mr. Ygnacio Diaz which was recommended to Mr. G. Rugan to be remitted by him personally, and he, Mr. Rugan, had confidence enough in me to give me the letter for me to deliver it, to the said Doctor Ygnacio Diaz, which I did accordingly by sending it by Mr. Gustavus Roget, my clerk; to deliver it to him, which was duly executed, and per this opportunity you will receive an answer to it. Relative to the several items mentioned in your letter paid in advance on acc't of the four thousand four hundred dollars Spanish: In order to enable you to settle with your associates, it is positive that you have paid this amount say $1,071.68¾c. which I shall have endorsed on the back of said bond of $4,000 Spanish as soon as I can go to the escubano's, to have the same duly arranged.

I observe in your favor of 4th ult'o that you are anxious to receive the answer from this gov't to my memorial of 4th March, I hope you will in this have rec'd said answer which I forwarded you with a copy of my correspondence, per schooner Emperor dated 20th May, duplicate of the same herein bond, and likewise have forwarded to Messrs. Bogart & Kneeland of New York a copy of the answer, &c.

I recommend you earnestly to send me the articles I so pressingly requested you to send me, as per my several letters, and hope you will not fail to send me the knives, forks, spades, shovels, &c. as per first opp'y.

186 Nothing new to communicate things stands as per my last advices to which I refer you for particular-.

Wishing you health and prosperity I remain dear sir,

Your most ob't sevr't,

(Signed) ALEX. CHATAING.

Copy.

LA GUAYRA, *Sept.* 1, 1836.

Mr. Jacob Idler, Philadelphia.

SIR: Under date of 13th last sent us — our mutual friend Mr. Alex. Chataing the inclosure to forward it to you by first opportunity without fail and as this is the first via New York, we hand it to you herewith.

With much regret we announce to you the sudden death of this our said friend Mr. Alex. Chataing in Caracas under date of 20th last and his funeral took place the following day.

We remain sir, your most ob'd't serv'ts,

(Signed) STROHM & CO.

Copy.

CARACAS, *July 17th*, 1836.

Jacob Idler, Esqr., Philadelphia.

DEAR SIR: I confirm the contents of my last dated 9th inst. Since then the secretary of the supreme court has informed me that the said court had decreed that you should be cited at your home by one of your magistrates to appear before this court personally or by your attorney to answer to the new pretension of *institucius in integrum*. I am very glad that they have adopted this false step, because your Government will certainly be annoyed by this and perceive clearly that this gov'm't is only sporting with yours, and this will certainly oblige yours to take positive measures for enforcing the payment, because your suit has been definitely settled before, and your claim is the most legitimate in the world, as it has been the cause or at least a great help to the gaining of the independence of this country, as you will perceive by the proclamation contained in the pamphlet which I published. It will be an easy matter for you to answer this citation th-ough the service of a good lawyer at home, and present it with a memorial to your Government praying to adopt measures immediately for enforcing the payment of your claim.

187 I had yesterday a conference with Mr. Williamson on this subject, and he is of the same opinion as myself, and he intends writing to you by this opportunity.

I remain, dear sir, very sincerely your ob'd't serv't,

(Signed) ALEX. CHATAING.

Please turn over.

I have rec'd your favor of the 28th May including invoice of one box of fowling-pieces and a bale of cotton wicks am'g to $53.53c. hard dollars for which I have given you credit. I have taken note of your intention of sending me cotton washing which will answer well, if you send them soon. I have seen some sold here at $150 to $170.

Yours,
(Signed) ALEX. CHATAING.

Copy.

CARACAS, *November 11th*, 1835.

Mr. Jacob Idler, Philadelphia.

DEAR SIR: I have received your esteemed favor of — per the Virginia Trader, enclosing bill lading and invoice to a box fowling-pieces am'g to forty-nine dollars which has duly been placed to your credit. I have likewise rec'd per Stagg a *whig* that you had the goodness to send me, and suits me perfectly well.

If I was not afraid of your situation, I would request you to send me another box of fowling-pieces, but of only of one barrel and of flints, as I wish no more percussions for this country. I have the day before yesterday seen Mr. Williamson, and he seems willing to commence some proceedings regarding your claim. This revolution of the 8th July is now nearly concluded. Paez is expected in five or six days, with Monagas and his two brothers from the east who were the chiefs of the eastern part and that is positive, remains only in Pto. Cabello with Caravano that commands, with about six hundred men, that must surrender in my opinion before a month. You may be certain that I neglect nothing on my part to activate or bring forward your business; Dr. Dias is in the same notion and sends you his compliments.

By the next opportunity I will write to you more fully.

I remain, dear sir, your most ob't serv't,
(Signed) ALEX. CHATAING.

188 Copy.

CARACAS, *May* 20, 1834.

Mr. Jacob Idler, Philadelphia.

DEAR SIR: I received your favor of 30th March inclosing bill lading and invoice to two bales candlewick, am'g to $11.78c. Spanish, $14.72c. currency, which I have duly placed to your credit, I am really very much disappointed, of your not sending me the various articles, that I requested you to send me as per my letter of 20th November last, and confirmed by my several respects of 7th January, 10th February, 4th April, &c. &c., the articles are as follows:

Knives and forks, as expressed by my letter of 20th November, hoes, spades, shovels, and a case fowling-pieces; I hope you will not fail to send me these articles per first opportunity. I must observe to you that I hope you do not think that I would detain the amount of goods that you may have the goodness to ship to me on

account of the other affair, on the contrary, by no means would I do so, and as soon as you send me the above-named articles I shall remit you the balance of account, I am now in want of those articles, and I am convinced beforehand that you will not disappoint me, this time, not doubting that your are always ready to serve me, the same as I am to serve you. My respects to our friend Baron Humboldt. Dr. Ygnacio Diaz sends his respects to you, and I remain your friend and ob't serv't,

(Signed) ALEX. CHATAING.

Copy.

Duplicate.

CARACAS, *7th January*, 1834.

Jacob Idler, Esq're, Philadelphia.

DEAR SIR: Since my respects of 20th November I have received your esteemed favor of 4th and 9th same month, the first including bill of lading & invoice of three kegs hardware shipped to me per brig James Coulter, invoice amounting to $217.80c. the latter confirming the same—I have duly credited your acc't of am't invoice say $217.80c. Spanish a- 25 per ct. exchange—$272.25. Currency on examination at the custom-house of said hardware, were found missing three spades, which I have debited your acc't say $1.16 Spanish, $1.45 currency.

I now confirm the contents of my letter of 20th November last in which I requested you to send me the curvis, knives & forks &c.—I am in hopes that per first opportunity I will receive them—The coffee shovels are of good quality, likewise the hoes, but the latter could have been better finished and more neat, As to the spades they are of inferior quality, the quality I desire are those 189 wrought and not cast, they must be of the same shape, it is requested that the neck or eye should be strong, In consequence thereof I request you to send me per first opportunity double the quantity of spades, hoes and shovels, of the quality above mentioned, also the curvis, knives & forks which I expect, My best respects to Baron Humboldt and remain your friend & well-wishes.

(Signed) ALEX. CHATAING.

Copy.

CARACAS, *September* 24, 1831.

Alexandro Chateng, Esq.

SIR: Having explained to you the situation of the lawsuit which this government commenced — me and associates, on pretext they having overpaid Sor. H. Ogden at Bogota for account of my associates, Bogert and Kneeland of N. York, upwards of —000 on the contract of 4,360 muskets, and in addition they say that the $6,848.96 paid on said contract in cocoa was ps. fuertes, and the $24,340.54 vales received was macuquina, obtained a judgment against us of $37,837.48, holding my person and property responsible as contractor and associate of Bogert and Kneeland and others, to whom I should look to refund me. I have informed them of

this accorrance, asking for documents much wanted, and aid of expenses to close this suit for the good of all concerned. They have not replied, sent no documents or funds, and leave me in the lurch. They are disgusted with the acts of this government, but that does not settle this judgment of $37,827.48, left me no other resource but do the best I could. In this way I was compelled to spend so many years of my time and exhaust my funds in this expensive — in order to see justice done to all concerned. Mr. Sprotto, to whom the decision was left as third arbitrator to examine all accounts, and he decided that liquidation of Gl. J. de Escalona legal and correct, annulling the transactions of Mr. H. Ogden, incorrect and illegal, he not having acted under my power, and all the other accounts incorrect, making the balance due $72,346.34.

The government appealed from this just decision. They have all the power and aid to overthrow it and make us pay their incorrect demands, with 12 per cent. interest and all costs, and if I cannot pay, they will enforce their judgment against my associates in the United States. To avoid such an unjust loss to me and associates (who) serve this government at a most critical epoch, I beg your assistance to obtain justice, knowing the great influence you have with the persons who can prolong or end this costly suit, as pr. liquidation of Mr. Sprotto, so just and clear. By doing so, I will allow you for self and my associates ten per cent. from the amount awarded and by the sentence; and when received to be paid to you in the same class of payments I receive of this government. If they pay in vales your commission is — in vales; if in cash or in duty of totalidad you receive that class for your commission.

190

By our last interview you think upwards of —00 cash. 500 are wanted to effect this object, but please to observe whatever I may fall short, I cannot pay until I receive it from this government, or from my associates, as the expense of this suit for more than three years has exhausted nearly all my funds, and prevented me from doing anything, as the government has stopped and embargoed all my demands against them, and prevented me from returning to Philadelphia till the amount overpaid H. Ogden at Bogota was paid.

I remain, very respectfully, your ob'd't hl. servant,

JACOB IDLER.

CARACAS, *April 20th*, 1836.

Mr. Jacob Idler, Philadelphia.

DEAR SIR: I take the pen to write you per the Montgomery, to confirm my last respects of February and March. Your son Jacob has five days ago made a kind of representation to the supreme court, and taken your defense, saying that your residence was in Philadelphia, and there you may be cited, and joined to his representations one of my pamphlets, though Ignacio Dias was the author of the representation being hurried by the Baron Humboldt. It will do neither good nor harm, and of course I did not oppose anything. The Dr. Paul sent for me a month ago, to

tell me that he was named by the supreme court defensor of your person, and if I was your apoderado to answer for the expenses. I told him your defense was already settled and had nothing more to do, but to look over the pamphlet I published in 1834 in answer to the decision of the consejo, published in the gazettes No. 167, 169; that the chargé d'affaires of the U. S. was the only person that could redress the difficulties that the government of Venezuela wish to bring again forward; that if his authority is not sufficient to bring to a close this affair in compelling this government to comply with their several sentences, and after having detained you here ten years in fruitless exertions,—that you will spend no more money in the case.

I visit Mr. Williamson now and then. He tells me that he has officially communicated to this government relative to your affair. How far he has complied with I cannot exactly inform you, but I presume he pursues the line of conduct prescribed him by his government. For my part, I have done and will always do as I promised you, to watch your interests. It will not be amiss to endeavor that the President of the U. S. should give positive orders to his chargé d'affaires to bring to a speedy conclusion your affair
191 without any further delay. Otherwise, as I have always told you (you) will never obtain anything, because we are marching from one revolution to another, and therefore they will always find a pretext to elude payment.

I remain, dear sir, your most ob't servant,

(Unsigned.)

PHILADELPHIA, *May* 24, 1836.

Mr. Alexander Chataing and Dr. Ignacio Dias.

GENTLEMEN: Your esteemed favor up to April 20th have come to hand, and note the illegal acts of your government and court; a false pretext to amuse our government. I obtained a final sentence. All nations call this a transaction concluded, and my defense is concluded three years ago. The President and Government of the U. States has taken charge of this business to see us paid, and the Government expressly desired me that myself or agents should not meddle or interfere in the demand against the government of Venezuela; that they have taken charge and will do the needful, of which we informed you last year. You will of course indirect- use your influence with your friends to facilitate the payment. I have no more defense to make or money for it, as that was made during the long trial and is done with, and now the whole is under the direction and control of the Government of the U. States; and when the government pays, you and Dr. Dias are to receive and transmit funds as directed. I have not authorized my son Jacob, or any other person, to meddle in any respect. I suppose Dr. Dias wished his pamphlet to be handed to the court, by which they could see their childish illegal proceedings, and he likely thought proper to transmit it to them through my son; and you should have stated it so in your letter. In the way you state it, it would appear as if he had taken my defense, and authorized by me to meddle with it,

which is not the case, which confuses my associates. In your next please to explain it; the reason that Dr. Dias simply used him to hand the pamphlet to the court, that they may see their error.

Mr. J. G. A. Williamson and government will no doubt not listen or admit any new movements or deviations from the first sentences, and will insist on complying with their sentences given upwards of three years ago by competent judges. Please remind him on this point.

Very respectfully, your ob't servant,

JACOB IDLER.

(Addressed on back of letter:) Alexander Chataing, Esq., Caracas, per brig Montgomery.

192 PHILADELPHIA, *May* 28, 1836.

Alexander Chataing, Esq.

DEAR SIR: Inclosed you have invoice of one box fowling ps., and one bale of candle wick, amounting to $53.53 hard dollars. The candle wick has got so high, some ask 50 cents per lb. I used to buy that made at Caracas at 20 cts. p'r lb. stronger than ours. Goods in general have much advanced and — scarce. Many are quite out of assortment, as the demand for the Western States has been greater than ever. The fowling-pieces come in cases of 40 to 60. Will not sell less than a case assorted, and contain too many of high price, twisted barrels and not suitable for your market, as you would lose on them. This is all I could find to suit you. As for gun-locks, they ask 11 dollars p'r doz. for the worst kind, and the finer sort come too high; and will not break packages.

My son Charles is in co. with one of the best artists in machine work. They make also cotton gins of the best kind. Jacob has ordered 4 small ones, which are bespoke. One of them will last longer than six made to the eastward. As the saws are all fixed in metal, they are highly approved of. As soon (as) he has some more done I shall recommend him to send you one on consignment; but as their means are small and the material and workmanship is all cash, it requires a speedy sale. They cannot lay long out of the funds.

Very respectfully your ob't s'r.,

Very respectfully, JACOB IDLER.

(Addressed on back of letter:) Alexander Chataing, Esq., Caracas, per brig Montgomery.

PHILADELPHIA, *June* 17, 1836.

Messrs. Alexander Chataing and Dr. Ignacio Dias.

GENTLEMEN: My last was dated May 24th, to which I beg your attention. Your favor of May 20th is just received. I note what you say about the Hon. W'ms, and in regard to the acts of your government and judges, tools to them and placed there by them to do what they wish, legal or any way as said before. Our Government particularly requested me that neither myself or agent must

interfere in the collection of this demand of which I informed you; and as it is, neither myself or friends interested, or you, can take any notice of such illegal steps taken by said government, except our minister, will no doubt at once protest against such illegal selfish acts, and insist on the compliance with the sentence. Can there be anything more ridiculous than their acts, which is
193 because they have lost the suit, and instead of paying they wish to try it over again, by whom?—by men placed there by them and under their control. You well know that during the trial, when a certain arbitrator, your old neighbor, was named as arbedrador, instead of he settling the account, they managed to make the liquidation themselves through Dr. F. Mr. T., to suit themselves. If we, or our Government, would make such a mistake (as) to consent and let them try it over again, the government and their tributaries would clear themselves of the whole amount due us, by incorrect accounts and pretended settlements at Bogota, as they did before.

As to a final settlement at Bogota, by Mr. Ogden or myself or any agents, (it) is totally false. Mr. Ogden's settlement was illegal. He settled a part and left the rest, and errors to be accounted for, which item of errors and the damages for not receiving the Varinas tobacco, I laid before G'l Bolivar, amounting to about eighty — thousand dollars, which he admitted just and correct a few days before his departure to Bogota (1827), saying there being no funds in the treasury of Caracas, that I must come to Bogota; that he himself would see it — and paid, as per liquidation made by G'l Escalona; that he sent G'l Clemente to my house to inform me that all was admitted,—to come to Bogota. In like manner he sent to Dr. Paul to inform him the same. I went to Bogota, which cost me nearly $3,000.00. At my arrival I found G'l Bolivar, and L't Ander disagreed and all deranged; and G'l Bolivar said, in the state things was, I must have a little patience and all should be settled, as he had decreed through G'l Clemente; that I might in the meanwhile go to the office, and than make the entry of these items unsettled. I went and they noted the error of $3,000.00 and $6,000.00, and demurrage on Endymion amounting to about $22,000.00; and for the loss or detention of the brig Elena of $8,742.00 agreed to by Dr. Roscio and G'l Clemente, that I must first furnish them with a certificate of G'l Clemente acknowledging these facts, and also a certificat of the loss of 33⅓ p't which and others was justly due me; but they must have some documents before they could credit them, to show the reason of the credits. All they required about the $49,164.00 loss on V. tobacco was I should get a certificate of sundry merchants at Caracas or U. States, to certify that the loss for not getting the tobacco was 33⅓ p't; but there were no merchants acquainted with that tobacco at Bogota, and could only be obtained at Caracas, of which I informed G'l Bolivar; and he said: your contract stipulate to be settled and paid in Venezuela; that he would in a few days start for Caracas (and) I should also go and all should be settled there. I went off with him, and after 9 days' journey he received account of the revolution at Carthagena, and he proceeded to

Ocanno and I to Caracas. G'l B. did not come. I then wrote a few lines to Dr. Vargas, requesting him to do me the favor and call at the office for a copy of the sundry items already found correct, amount- to about $22,000.00, to enable me to send it to my friends, when the intendency of Caracas commenced suit to liquidate my accounts. Having a protested bill of £2,000, I sent it to Vargas to get certificates for it, and he informed me he could not get
194 them without a power to settle and receive them, which I did, and informed him that the government of Venezuela had taken the settlement of my account into their hands, that all would be settled there; that I have no other demands at Bogota except the protested bill of £2,000. And some time after he informed me that he had called at the office for copy of the items admitted.

Before I left Bogota, Mr. Joves, who had done that, had gone to the U. States and a new one was on his place; that he had prevailed on him to admit them also, but that he had deducted $18,050.00 for vales paid at La Guayra. Said amount was already deducted by Gl. Escalona in the contract of the Endymion. I informed Dr. Vargas that this manœuvre of readmittance was unauthorized by me,—that they must cancel and annul the whole; that the old government and all of them had been duly informed that this intendency of Venezuela had taken the settlement of this demand into their hands, and prohibited officially any settlement and payment at Bogota, as these contracts expressly stipulate to be settled and paid in Venezuela, and they having separated from Bogota all or any settlement at Bogota was at an end.

The whole of the members of the government of Bogota are great intriguers, all are always ready to defeat the most just demands of the stranger, and Mr. Michelena has no doubt put them all up to certify anything your government may wish them to do, and make it appear all was fully settled. Not the least reliance can be placed on any documents from there; and all J. G. A. Williamson has to do (is) to listen to no new movement, and protest against such unheard-of selfish acts, and insist on compliance with the sentence given by the former high court. It cannot be that he, or our government, will listen to the acts of children, as they call themselves.

Very respectfully, your o't servant,

JACOB IDLER.

(Addressed on back of letter:) Senor Alexander Chataing, merchant, Caracas.

PHILADELPHIA, *August* 20, 1836.

Alexander Chataing.

SIR: Yours of 9th and 17th July are received, and observed the childish acts of your government. As to the court, they are under their control. It is the head of your government which instigates this illegal delay in paying what they owe to those who enabled them to gain their independence. If your president and vice-president, who have the power, and it is too well known at Washington (that) they are the government, in fact any delay caused in satisfy-

ing a sentence given by an impartial high court, instead of
195 paying they start illegal excuses, they are the persons which will be blamed, and if not soon satisfied they will then cut a very small figure by this government. G'l Jackson, in his last message, spoke very plain that the creditors of the S. A. governments could depend on (it) that justice will be obtained for them.

My son William sends you a small adventure of very choice figures, invoiced at the prime cost. As your duties are high he has invoiced them at prime cost, but the invoice he ordered he found the damage so great, that the goods ought to bring upwards of three times the price invoiced to clear him from loss. Also sent you cotton gin. Jacob has ordered a number and sent on funds for it and other articles to William. I expect Mr. Wallis is interested in these orders, as they are pretty large.

The iron-frame gin sent you by him was wanted to fill other orders, but I recommended to send it to you, that you will convince your friends how much better they are than the Boston ones. I hope you will soon obtain payment from your government for our demand.

Very respectfully, your obedient servant,

JACOB IDLER.

My best respects to our friends and Baron Humboldt, who has not written a line to his friends here. I do not know what can have offended him. We all like him and shall continue so.

(Addressed — back of letter:) Alexander Chataing, Esq., Caracas, per sch'r Cyrus.

PHILADELPHIA, *August* 20, 1836.

Mr. Alexander Chatang.

SIR: Enclosed you have invoice and bill of lading of four boxes figures, and two boxes containing one cotton gin, which I hope may meet a speedy sale. The proceeds you will please remit in coffee or money. I am much in want of it for my fabric. At present I have more orders for cotton gins than I can possibly finish.

As you are not perhaps acquainted with the fitting and setting together of gins, you will please call on Mr. Wallis or Jacob, as they understand it.

I remain, very respectfully, your obedient servant,

WILLIAM IDLER.

196 N. B.—Should Dr. Ignacio Dias wish any of the figures, he is welcome to any one he should fancy.

(Addressed on back of letter:) Alexander Chatang, merchant, Caracas.

PHILADELPHIA, *October* 3, 1836.

Senora Chataing.

MADAM: I beg leave to state that I consigned a cotton gin and sundry busts to Alexander Chataing, Esq., for my account; but being informed of the death of this beloved friend, which I sincerely lament owing to this occurrence, I beg you to be pleased to deliver

the gin and figures to ms brother, Jacob Idler, Jr., and the invoice, that he may sell it and remit the proceeds to me, as I stand in need thereof. By giving the above attention will be thankfully acknowledged. My brother will pay the freight on said goods. With great esteem and respect,

Your most obedient servant,

WILLIAM IDLER.

(Addressed on back of letter:) La Senora Chataing, Caracas.

PHILADELPHIA, *Deciem* 1°, 1836.

A. La Sora. Manuela Montevede de Chataing.

MUY APRECIADA SORA.: He recibido la apreciable carta de V de fha 23 de Setiembre, de la quel he informado mis amigos.

Desde nuestro Gobierno ha tomado cargo de mis demandas yo no puedo mesilar de manera alguna con ellos. El Honorable J. G. A. Williamson esta cargado con la demanda, el es la persona ahora de ser consultado, de la quel he informado al Sor. Alejandro Chataine. El Sor. Williamson obrara a la satisfacion de todos interesados.

Siento muchisima la perdida de nuestro buen y estimado amigo el Sor. Alejandro Chataing.

Soy con la mayor, respeto su seguro, Y. ob't servidor,

JACOB IDLER.

197 NEW YORK *January* 5, 1837.

To J. G. A. Williamson, Esq., Caracas.

Your letters of the 22d and 28th Nov., addressed to Mr. Phelps were received on the 29th ult. It is a matter of regret that any new difficulties should have arisen or anticipated in the adjustment of the claim of Jacob Idler and associates.

You remark that if the decree of the supreme court should be obtained it may have to go to congress for confirmation. Where to adjust the affair at once it may be as necessary to have funds as in any other stage of the business, and further suggest the propriety of relinquishing for all purposes the entire interest on the amount of principal.

The sacrifice thus called for to open the eyes of Justice as you truly remark is very great, and it is to be hoped after all, she may be made to see with less obliquity of vision for a smaller sum! to meet the necessities of the case however, and to ensure an early adjustment of the same, we authorize you to employ any part of the interest accumulated on the principal of $70,520.11½, which according to the statement rendered in our letter of the 7th Oct. amounted on the 1st inst. to $48,678.80, in making this large appropriation it is, we trust needless to remark that it be to borrow your own language for all purposes, including of course any and all claims which may be preferred by Mr. Chataing's representative, or Mr. Dias, whose claim you will have to adjust.

In the event of your success within the spirit of our present instructions and hard dollars are not to be obtained, you are authorized

to take orders on the custom-houses, payable in Totolidad and to order as mentioned in your letter of the 28th Nov., suggesting that you obtain these orders on the custom-houses of Laguyra & Porto Cabello in preference to the other places mentioned in your letter. Unless you should deem them most to our interest to extend them to Angostura & Maracaibo, places too little frequented by our commerce to ensure prompt returns.

We remain, very respectfully your ob't serv'ts,

THADS. PHELPS.
BENJ'N L. SWAN,
BOGERT & KNEELAND.
JACOB IDLER.

Endorsed: 1837. Bogert & Kneeland, Benjamin L. Swan, Thadeus Phelps, Jacob Idler, full power to pay a certain sum to succeed in their claim. ¼ r'l estrangeras (x case No. 2) rebajada cargada fpor 1 r'l.

Addressed: 1, Hon. J. G. A. Williamson, (No. 70) chargé des affaires of the United States, Caracas, Texas.

198 Private.

NEW YORK, 7 *October*, 1836.

DEAR SIR: We have considered your letter of the 13th August addressed to Mr. Phelps on the subject of the decree in favour of Mr. Idler. The course pursued by the government of Venezuela has been a most extraordinary one. They institute a suit themselves in their own courts, judgment is rendered against them, availing themselves of a special privilege, they appeal again, and again are defeated, and now after years have elapsed instead of paying the debt, they seek to open the final sentence of their own tribunal of last resort, and to compel us to consent to what they are pleased to call a *restitutio ad integrum*. You cannot employ language too strong to remonstrate against this arbitrary and iniquitous proceeding. Should the government of Venezuela persist, nevertheless, in this new vexation, we must necessarily leave it entirely with you to surmount the difficulty in the best way you can. In your letter to Mr. Phelps you remark that the question now is "How far in expense &c. to be paid only out of what may be recovered, you and your other friends are willing to go" to which we answer that we will at your discretion go to the extent of fifteen to twenty-five per cent. to be made perfectly sure of recovering in hard dollars or their equivalent the amount of the judgment say $70,520.11½ with interest at 6 per cent. from June 30, 1825, Suppose then that the judgment $70,520.11½ and the interest to the 1st January, 1837, amount to $48,678.80, we shall be entitled to receive $119,198.91½. Now to satisfy any charge that may be made for or on behalf of Messrs. Chataing and Diaz for the services they have rendered us, we will suppose that you will possibly deem it expedient to appropriate otherwise so much as will make all charges against the claim amount to twenty-five per cent. say $29,799.73, the nett sum

to come to us would be $89,399.18½. We trust, however, that you will be able to make the result much more favorable to us, it being always understood that you are to pay nothing, except from what may be received from the gov. of Venezuela. You will receive with this a letter from Mr. Jacob Idler, which we have all agreed upon.

With great respect, we remain your ob't s'ts,

THAD'S PHELPS.
JACOB IDLER.
BENJ'N L. SWAN.
BOGERT & KNEELAND.

To the Hon. J. G. A. Williamson, chargé de affaires, United States, Caracas:

P. S.—Since the receipt of your letter of the 13th of August which came to hand on the 22d ulto. We have been advised of the
199 death of Mr. Chataing, and it is only since having prepared the foregoing letter that it has occurred to us that his decease may possibly create some difficulty not now anticipated by us. For your government, therefore it is proper to state that Mr. Idler agreed with Mr. Chataing to allow him 10 per cent. on such sums as should from time to time be received, in other words a tythe of all received in kind whether in money or any other property. How far Mr. Chataing's death may entitle his executors to claim the whole or a part of the stipulation made by Mr. Idler, is a subject for the exercise of your judgment, *be*, we would recommend that it should be made a matter of private discussion between you and Mr. Chataing's representatives. What understanding may have existed between him and Mr. Dias (whose friendship and influence it may he important to preserve for any compensation he may be entitled to) is unknown to us, and is a matter only to be adjusted between the above parties. If therefore, the whole ten per cent. is insisted upon the point must be yielded if in your discretion the least resistance should be deemed prejudicial to our interest, and if a further sacrifice of five per cent. in addition to the already named, be necessary to bring this vexatious business to a speedy settlement. You will not make it an obstacle to a satisfactory adjustment of the affair. Mr. Idler's power of attorney you will herewith receive, but perhaps it may be best for you not to apprise the friends of Mr. Chataing of its existence until the business is finally adjusted.

Be pleased to acknowledge the receipt of this communication as early as convenient.

Truly yours,

THAD'S PHELPS.
JACOB IDLER.
BENJ'N L. SWAN.
BOGERT & KNEELAND.

No. 63.

Endorsed: 1836, Thadeus Phelps, Jacob Idler, Benjamin L. Swan, Bogert & Kneeland. 7th Oct., 1836, case No. 2. No. 82.

Awards of the Commissioners, July 14th, 1890.

Claim of—

JACOB IDLER
vs.
THE UNITED STATES OF VENEZUELA. } No. 2.

The undersigned, commissioners appointed under the convention between the United States of America and the United States of Venezuela, for the reopening of the claims of citizens of the United States against Venezuela under the treaty of April 25, 1866, concluded at Washington, December 5, 1885, concurring in the decision herein, having duly heard the above claims and considered the evidence and arguments of counsel pertaining thereto,
200 do decide that there should be and there is hereby awarded against the government of the United States of Venezuela in full satisfaction of the said claim the sum of seventy thousand five hundred and twenty dollars ($70,520) gold coin of the United States of America, with interest thereon at the rate of six (6) per cent. per annum from October 1, 1832, to September 2, 1890, inclusive, amounting in all, after deducting the payments heretofore made on account of the former award, to the sum of two hundred and seventy-seven thousand six hundred and seventy-eight dollars and forty cents ($277,678.40), which sum is to be distributed and certificates issued therefor as follows:

Ninety-two thousand five hundred and fifty-nine dollars and forty-six cents ($92,559.46) to William Idler and John W. Hazeltine as administrators *d. b. n.* of Jacob Idler, deceased; thirty thousand eight hundred and fifty-three dollars and fifteen cents ($30,853.15) to Frederick J. Whiton; ninety-two thousand five hundred and fifty-nine dollars and forty-seven cents ($92,559.47) to Henry L. Bogert, trustee; thirty thousand eight hundred and fifty-three dollars and sixteen cents ($30,853.16) to Mary L. Russell, and thirty thousand eight hundred and fifty-three dollars and sixteen cents ($30,853.16) to Crammond Kennedy.

JOHN LITTLE,
JOHN V. L. FINDLAY,
Commissioners.

DEPARTMENT OF STATE,
WASHINGTON, *October* 11, 1893.

The undersigned hereby certifies that by the commission which sat at Caracas, Venezuela, under the claims convention between the United States of America and Venezuela, of April 5, 1866, an award was made in behalf of Jacob Idler, for two hundred and fifty-two thousand eight hundred and fourteen dollars ($252,814), and that upon the 21st of June, 1871, there was paid on nine certificates representing the above award, to William H. Whiton, attorney, the sum of seventeen thousand six hundred and ninety-six and $\frac{98}{100}$ dollars ($17,696.98), and again upon the 16th day of May, 1876, the

sum of twenty thousand two hundred and twenty-four and $\frac{57}{100}$ dollars ($20,224.57) was paid in parts of one-third and two-thirds respectively, and separately to William Idler, administrator, and William Henry Whiton: also, that upon an award given in behalf of Jacob Idler for two hundred and seventy-seven thousand six hundred and seventy-eight and $\frac{40}{100}$ — ($277,678.40) by the commission which sat at Washington under the claims convention of December 5, 1885, there was paid to William Idler and John W. Hazeltine, administrators *d. b. n.*, upon the 15th of October, 1890, the sum of twenty-four thousand one hundred and eighty-seven and $\frac{30}{100}$ dollars ($24,187.30), and also upon and before the 23d of January, 1892, to the same parties, the further sum of ten thousand one hundred and sixty-five and $\frac{32}{100}$ dollars ($10,165.32); and to Henry L. Bogert, trustee, sums equal to the two last-mentioned amounts, at or about the same times.

F. J. KIECKHOEFER,
Chief of Bureau of Accounts and Disbursing Clerk.

201 UNITED STATES OF AMERICA, *Eastern District of Pennsylvania,* } *sct:*

I, Samuel Bell, clerk of the circuit court of the United States of America, for the eastern district of Pennsylvania, in the third circuit, do hereby certify the following to be a true and faithful copy of the original exhibits on behalf of plaintiff and defendants in the case of Charles L. Borgmeyer, administrator, &c., *vs.* William Idler *et al.*, administrator, &c., No. 1, October session, 1892, on file and now remaining among the records of said court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this 12th [SEAL.] day of May, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States the one hundred and eighteenth.

SAMUEL BELL,
Clerk of C. C.

202 And afterwards, to wit, on the 21st day of September, A. D. 1894, this cause being called for argument before Mr. Justice Shiras and Hon. M. W. Acheson and Hon. George M. Dallas, circuit judges, and being argued by counsel for the respective parties, and the court, not being fully advised in the premises, takes further time for consideration thereof.

And afterwards, to wit, on the twenty-second day of January, A. D. 1895, comes the parties aforesaid, by their counsel aforesaid, and the court, now being fully advised in the premises, renders the following opinion, to wit:

203 United States Circuit Court of Appeals for the Third Circuit.

WILLIAM IDLER and JOHN W. HAZELTINE, Citizens of the State of Pennsylvania, Administrators *de bonis non* of the Estate of Jacob Idler, Deceased, Plaintiffs in Error,
vs.
CHARLES L. BORGMEYER, a Citizen of the State of New Jersey, Administrator of the Estate of Alexander Chataing, Deceased.

In error to the circuit court of the United States for the eastern district of Pennsylvania.

Before Shiras, circuit justice; Acheson and Dallas, circuit judges.

ACHESON, *Cir. J.:*

This was a suit brought on September 15, 1892, by Charles L. Borgmeyer, administrator of Alexander Chataing, deceased, against William Idler and John W. Hazeltine, administrators *de bonis non* of Jacob Idler, deceased. Alexander Chataing was a citizen of Venezuela and a resident and merchant of the city of Caracas, where he died on August 20, 1836. Letters of administration upon his estate were granted to the plaintiff on September 14, 1892, the day before this action was commenced. Jacob Idler, who resided in Philadelphia, died there May 26, 1856. His widow administered on his estate, and upon her death, some twelve years later, letters of adminstration *de bonis non*, dated December 16, 1869, were granted to the defendants. The defendants settled administration accounts in the orphans' court of Philadelphia, and the moneys which had been received by them were distributed under the orders of that court. No claim on behalf of the estate of Alex-
204 ander Chataing was ever made against Jacob Idler, nor was any such claim made against his personal representatives until the year 1892.

The plaintiff's statement of claim sets forth as grounds of action two instruments of writing (the originals of which are in the Spanish language), one dated September 25, 1832, and the other January 9, 1833.

Before giving translations of these papers it should be premised that, between the years 1817 and 1819, Jacob Idler, acting for himself and his associates in the enterprise, they all being citizens of the United States, furnished military supplies to Venezuela. They claimed that a large balance was due them on that account. Disputes arose between that government and Idler, and the latter went to Venezuela about 1823 to effect a settlement. A prolonged litigation between the government and Idler in the courts of Venezuela ensued. On September 18, 1832, the juez de letras, the treasury court, an inferior tribunal, adjudged that the government was indebted to Idler in the sum of $70,520.11½. In this state of affairs the first of the two above-mentioned writings was executed. The translation furnished us reads thus:

"[SEAL.] Fifth seal for the economic year 1832–1833; value, a real.

"Be it known by this document, that I bind myself to pay to Senor Alexander Chataing as well on my own account as upon that of my absent associates, a commission of ten per cent. upon the amount of the payment that I am claiming from the government of Venezuela on account of supplies that I made to the aforesaid government in the year- 1817 to 1820, as soon as the payment or satisfaction is realized, which the aforesaid government has to make me in virtue of a judgment of the senor "juez de letras"
205 issued on the 18th of the current month. I declare that the aforesaid commission of ten per cent. has been well merited and gained by Senor Alexander Chataing on account of the assistance that he has given me during the prolonged suit which he has pursued against the government, and on account of the numerous acts of diligence which he has performed to that purpose; and in conclusion, on account of the entire direction which he has given to the matter, although no publicly given power has authorized him, since he has discharged exactly and with my consent in all details the matter referred to, as an honest and careful attorney. For which reason I have given him the aforesaid commission of ten per cent. upon the whole amount that the government has to pay me; *i. e.*, as well upon the principal as upon the interest that I claim from the State. I will make payment of the aforesaid commission of ten per cent. in the same way that the government makes it to me, that is to say, if it makes it to me by instalments in metal I will pay the commission as well in metal by instalments in *pro rata* of the sum that I receive at each instalment; and if the government makes me the payment in treasury notes or bonds for the whole amount, or whatever other nature in the same way I will make payment of the aforesaid commission in the same specie or form of treasury notes or bonds. I desire that this document shall have the same force as if it had been a public writing, and renounce all laws that could favor me; in virtue of which I sign the present document in the presence of three witnesses.

Caracas, September 25, 1832.

(The word "ano" amended. Vale.)

JACOB IDLER.

Witness:
FRAN^{co} RIBAS.
Witness:
JN. ZERESA.
Witness:
CIPRIANO MORALES."

206 What particular services Mr. Chataing had rendered in procuring the judgment does not appear and perhaps is a matter of no consequence; but in a letter, dated Caracas, September 24, 1831, from Mr. Idler to Mr. Chataing the former, after alluding to the protracted litigation in which he had been involved and the mention of an appeal which the government had taken from a decision of Mr. Sprotto, a referee in the case, said: "To avoid such an

unjust loss to me and associates, who serve this government at a most critical epoch, I beg your assistance to obtain justice, knowing the great influence you have with the persons who can prolong or end this costly suit, as p'r liquidation of Mr. Sprotto, so just and clear. By so doing I will allow you for self and my associates ten per cent. from the amount awarded and by the sentence, and when received to be paid to you in the same class of payments I receive of this government."

The translation of the other writing in suit reads thus:

"[SEAL.] Fifth seal for the economic year 1852–1853; value, two reals.

I, Colonel Andres Ybarra, principal registrar of the province, certify: That in the registry of public instruments kept by the escribano Juan Antonio Hernandez, appears a writing of the following tenor:

Obligation: In the city of Caracas, on the ninth of January, 1833, before me, the escribano publico, and witnesses, appeared Senor Jacob Idler, of this vicinity, and over twenty-five years of age, whom I certify that I know, and exhibited to me a ticket of the following tenor:

Treasury general of Venezuela: Ticket No. 18: January 9, 1833:
207 For 20 reals which Senor Alexander Chataing has paid, registry fee, due for 4,000 pesos which Senor Jacob Idler owes to him and promises to pay by a writing agreed to by himself before the escribano Juan Antonio Hernandez: two pesos, four reals: Copy of an entry upon folio 2 of the memorandum book of this month.

Caracas, date as above.

(Signed) LECUNA-SMITH.

As literally appears by the original, which remains in the record office in my charge, which I refer to and certify. Whereupon he said that he acknowledges that he owes to Senor Alexander Chataing, also a neighbor and of the 'comercio,' the amount of 4,400 pesos, of eight reals of silver each, which in coined and current money of account to his satisfaction the latter has furnished him since the 24th of September, 1831, for expenses of his subsistence and costs of the prolix and expensive suit pursued against the government of Venezuela in compensation for supplies made in the years 1817, 1820, in virtue of a contract made for himself and absent associates, and granting to him proper receipt with renunciation of the laws of delivery, exception of *non numerata pecunia*, proofs, &c., of the case, obliges himself to satisfy it executively, with costs, from the first funds that may be paid him by the government, his debtor, with his person and estate, present and future, judicial power, submission to this in order that it may compel and constrain him executively to its fulfillment as if it was by judgment given by consent and passed as a thing adjudged authoritatively, and making hereby renunciation of all laws, statutes, and rights in his favor,

although it may be one that may be propitious and afford a valid exception. The creditor, whom also I certify that I know, being informed of the literal contents of this writing, said that he accepts it according to law and agrees to wait. Thus respectively have said, granted, and signed, Senores Luis Apestegnia, Manuel
208 Galloso, and Lorenzo Callett, of this vicinity, being witnesses.

JACOB IDLER.
ALEX. CHATAING.

Before me—

JUAN ANTONIO HERNANDES,
Escribano Publico."

The judgment of the juez de letras was affirmed by the superior court on October 1, 1832, and on December 6, 1832, the decision of the latter court was affirmed by the supreme court of justice. The Venezuelan government, however, refused to pay the judgment or to recognize its validity, and in the year 1836 took steps in the supreme court of justice to have the judgment annulled by the allowance of the remedy of *restitutio in integrum*. The matter was then so proceeded in that on December 20, 1838, the superior court made a decision granting to the government the remedy of *restitutio in integrum* against the decisions of September 18 and October 1, 1832, and restoring the whole subject to the condition in which it was on August 31, 1830, and this judgment of the superior court was affirmed on February 22, 1839, by the supreme court of justice of Venezuela. The effect of this decision of the highest judicial tribunal of Venezuela was to set aside the judgment of the juez de letras of September 18, 1832, and to open up the whole controversy.

No further proceedings with respect to the claim of Idler took place in the courts of Venezuela. He and his associates sought and obtained the friendly interposition of the United States in their behalf. Other citizens of the United States had claims against Venezuela. To all these claimants the Government of the United States lent its good offices, and as a result a convention was concluded on April 25, 1866, between the United States and the Republic of Venezuela for the adjustment of American claims upon the latter government. By the terms of this convention a mixed commission, to sit at the city of Caracas, was created, consist-
209 ing of two members—one appointed by each government, and an umpire chosen by the two commissioners—to whom all claims by citizens of the United States against Venezuela were to be submitted for final decision. "The commissioners" (it was stipulated) "shall make such decision as they shall deem in reference to such claims conformable to justice, even though such decisions amount to an absolute denial of illegal pretensions, since the including of any such in this convention is not to be understood as working any prejudice in favor of any one, either as to principles of right or as to matters of fact." It was further stipulated that the commission should issue certificates for the sums to be paid claim-

ants under its decisions, and that all such sums should be paid to the Government of the United States.

Previously to the submission of the Idler claim to the mixed commission and with a view thereto Mrs. Idler, as administratrix of her deceased husband's estate, and her co-claimants referred to William H. Whiton disputes which had long existed as to their respective interests in the claim, and it was agreed that for his services in making the apportionment and in the preparation of the claim for presentation before the commission Whiton should have one-third of the claim. Whiton performed these services and the arrangement was carried out. The claim being submitted to the mixed commission, the two commissioners disagreed. The umpire, however, awarded to the claim the sum of $252,814. Nine certificates of equal amounts were issued therefor, three of which were delivered to the administrators of Idler's estate, three to their associates, and three to Whiton. Partial payments on account of these certificates were made by Venezuela to the United States, namely, on June 17, 1871, the sum of $17,696.98, and on May 16, 1876,
210 the further sum of $20,255.12. The State Department of the United States paid one-third of these sums to the administrators of Jacob Idler, one-third to their associates, and one-third to Whiton. No further payments were made on the award under the treaty of 1866.

On March 3, 1883, the President of the United States approved a joint resolution of Congress providing for a new mixed commission in accordance with the terms of the treaty with Venezuela of April 25, 1866. That resolution, after reciting that serious charges affecting the validity and integrity of the proceedings of the former mixed commission had been made by the government of Venezuela, and also by divers citizens of the United States who had presented claims for adjudication to that tribunal, requested the President to open diplomatic correspondence with Venezuela, with a view to the revival of the general stipulations of the treaty of April 25, 1866, and the appointment thereunder of a new commission, and also provided that from awards that might be made to claimants any moneys theretofore paid upon certificates upon awards made by the former commission should be deducted and such certificates deemed cancelled. Accordingly, on December 5, 1885, a new treaty was concluded between the two governments reviving the general stipulations of the former convention, adopting the provisions of the joint resolution of Congress, and providing for a new mixed commission, composed of two commissioners and an umpire, whose decisions or those of a majority of them, made, "as they shall deem" to be, "conformable to justice," should be final and conclusive. To this new mixed commission the Jacob Idler claim was presented, and a majority of the commission made the following award:

"*Awards of the Commissioners, July 14th, 1890.*

Claim of—

JACOB IDLER
vs.
THE UNITED STATES OF VENEZUELA. } No. 2.

211 The undersigned, commissioners appointed under the convention between the United States of America and the United States of Venezuela for the reopening of the claims of citizens of the United States against Venezuela under the treaty of April 25, 1866, concluded at Washington, December 5, 1885, concurring in the decision herein, having duly heard the above claims and considered the evidence and arguments of counsel pertaining thereto, do decide that there should be, and there is hereby, awarded against the government of the United States of Venezuela, in full satisfaction of the said claim, the sum of seventy thousand five hundred and twenty dollars ($70,520), gold coin of the United States of America, with interest thereon at the rate of six (6) per cent. per annum from October 1, 1832, to September 2, 1890, inclusive, amounting in all, after deducting the payments heretofore made on account of the former award, to the sum of two hundred and seventy-seven thousand six hundred and seventy-eight dollars and forty cents ($277,678.40), which sum is to be distributed and certificates issued therefor as follows:

Ninety-two thousand five hundred and fifty-nine dollars and forty-six cents ($92,559.46) to William Idler and John W. Hazeltine, as administrators *d. b. n.* of Jacob Idler, deceased; thirty thousand eight hundred and fifty-three dollars and fifteen cents ($30,853.15) to Frederick J. Whiton; ninety-two thousand five hundred and fifty-nine dollars and forty-seven cents ($92,559.47) to Henry L. Bogert, trustee; thirty thousand eight hundred and fifty-three dollars and sixteen cents ($30,853.16) to Mary L. Russell, and thirty thousand eight hundred and fifty-three dollars and sixteen cents ($30,853.16) to Crammond Kennedy.

JOHN LITTLE,
JOHN V. L. FINDLAY,
Commissioners.

212 Upon the trial in the circuit court the defendants submitted the following point with respect to the ten per cent. commission payable to Chataing under the paper of September 25, 1832:

5. The payments agreed to be made to Alexander Chataing for his services, as set forth in Exhibit B of plaintiff's statement, were contingent on Jacob Idler recovering satisfaction for his judgment against the government of Venezuela, in said Exhibit B referred to.

This point the court below affirmed. Other points relating to the same matter were submitted by the defendants and were re-

served by the court. We will quote several of these reserved points, as indicative of them all:

"Fourth. The construction of the contract for compensation is for the court. It was not in contemplation of the parties to the contract that Chataing should receive compensation for an award made by the international tribunal many years after his death, presented and prosecuted by other agents and attorneys. Venezuela having declined and refused payment, there can be no recovery based on an award made in Caracas in 1868 or in Washington in 1890, and the verdict must therefore, under all the evidence, be for the defendant."

"Sixth. The undisputed evidence in the case is that no payments have been made by the government of Venezuela on account of the judgment rendered against it, and which is set forth in said Exhibit B of plaintiff's statement, and therefore the verdict should be for the defendant."

"Ninth. The award in favor of Idler and his associates was made by an international commission, administering justice and equity, for the supplies, etc., furnished by them to that government and was a sentence or award after full examination of the merits
213 of the claim, irrespective of the original sentence of the Venezuelan court.

"Tenth. By the decree of *restitutio in integrum* the judgment in favor of Idler and his associates was annulled in Venezuela. More than fifty years afterwards an international tribunal made an award to these parties, and the moneys they received were based upon that award, and there can be no recovery in this suit."

Eventually the court below decided the reserved points against the defendants and entered judgment against them.

As is to be seen from its affirmance of the defendant's fifth point, the circuit court rightly considered that the payment to Alexander Chataing of the stipulated commission was contingent upon Jacob Idler recovering satisfaction of the judgment he had obtained on September 18, 1832, against the government of Venezuela. Evidently Idler and Chataing dealt with respect to that judgment. It indeed was the very basis of Idler's undertaking to pay the commission. Undoubtedly they contemplated the voluntary payment of the judgment by Venezuela, and this within a reasonable period. Idler was to pay the commission in the same way that the government made the payment to him and at the same times. Was satisfaction of the judgment, within the fair meaning of the paper of September 25, 1832, ever realized? The circuit court was of the opinion that substantially the money was collected on the judgment, the court saying, "The money collected must be regarded as realized on the judgment—the fruits of its execution by the Government of the United States." In this view we are not able to concur. The United States never undertook to enforce the payment of the judgment. From the first to the last its action in this matter was strictly diplomatic and peaceful. It merely exercised in a
214 friendly manner its good offices on behalf of Idler and his co-claimants. Had it gone beyond this, it would have vio-

lated its settled policy with respect to claims of its citizens founded on their contracts with foreign governments. Wharton's Inter. Law Dig., section 231. Moreover, the judgment of September 18, 1832, was absolutely annulled. The decision of the supreme court of justice of Venezuela is conclusive upon that point. It must be observed that the final judgment of that tribunal in the litigation with Idler did not affect his contractual rights, but left them in full force. The decision was merely that the remedy of *restitutio in integrum* was open to the government and was applicable to Idler's case, and that the action of the superior court in granting that remedy and thus reopening the case was right. Could Alexander Chataing, a citizen of Venezuela, or those claiming under him, challenge anywhere the binding force of the judgment thus pronounced by the highest court of his own country? Surely the courts of this country are to respect that judgment. Elmendorf *v.* Taylor, 10 Wheat., 152, 159; Smith *v.* Condry, 1 How., 28.

Idler's judgment having thus been swept away, the consideration for his promise to pay to Chataing a commission thereon wholly failed. The event upon which the commission was to be paid never occurred. Very certain is it that nothing was paid by Venezuela to Idler or to the personal representatives on the footing of the judgment. To apply, them, the writing of September 25, 1832, to the state of affairs brought about more than half a century afterwards by the award made by a mixed commission acting under an international treaty would be a perversion of the paper and would work the greatest injustice to the estate of Idler. The whole situation had radically changed without his fault. His judgment had
215 utterly failed him. The allowance of the claim was ultimately secured by the action of an independent tribunal proceeding upon original grounds. The favorable result was due to the long-continued personal exertions of Idler and his associates and the services at a vast expense of other agents and attorneys. All this the evidence shows. To the result neither Chataing nor his personal representatives contributed aught.

We do not consider it a matter of any moment that in pressing their claim before the mixed commissions Idler's administrators relied upon the Venezuelan judgment of 1832. That judgment was a part of the complicated transactions between their intestate and the government of Venezuela. It perhaps afforded some evidence of the correct amount of the indebtedness in dispute. Nor is it important how the majority of the commissioners may have regarded that judgment. Neither its correctness nor its existence was recognized by either of the treaties. The mixed commissions were to decide with reference to the merits of all claims submitted to them. The opinion filed on behalf of the majority of the last commission shows that the Idler claim was investigated and sustained by them upon its original merits. They were at liberty, had the facts so warranted, to have found against the claim altogether. That they awarded the face amount of the judgment with interest is of no consequence. The reasons for their award are immaterial here. The important fact is that whatever moneys Venezuela paid

on the Idler claim were paid on the awards of the mixed commissions and not otherwise. Construing the paper of September 25, 1832, with reference to its terms, its subject-matter, and the situation of the parties, we conclude that no payment or satisfaction of the judgment therein recited was ever made or realized within the true intent of the parties, and that the stipulated commission to
216 Chataing never became payable. It follows, therefore, that the reserved questions of law appertaining to this branch of the case should have been decided in favor of the defendants.

To the plaintiff's demand upon the other instrument in suit, the paper of January 9, 1833, three defences were set up, namely, first, payment in fact; second, the statute of limitations; third, the presumption of payment arising from the lapse of twenty years. Under the first head uncontradicted evidence of a persuasive character was produced to show that this indebtedness was entirely discharged in the lifetime of Alexander Chataing. By a writing dated Caracas, May 15, 1833, Chataing receipted for certain accounts due to Idler, amounting to $1,051.65, left with him for collection, and a small amount of personal property, to be sold on Idler's account. In a letter dated Caracas, June 6, 1834, and addressed to Idler at Philadelphia, Chataing acknowledged payment by Idler of $1,071.68 on this debt. Other correspondence shows that at different times Idler shipped merchandise to Chataing upon his orders. It is admitted that this correspondence on its face shows Idler to be entitled to an additional credit of $440.56. William Idler, a son of Jacob, testified that, to his personal knowledge, his father made other shipments of goods to Chataing; that "there were a great many shipments made;" that Chataing paid nothing on those shipments; that, while not able to state the exact amount of the shipments, he always believed that the whole debt of 4,400 pesos had been paid; that many of his father's books and papers had been lost or destroyed. Having regard to the antiquity of these transactions, the evidence of actual payment strikes us as remarkably full. It is to be considered in connection with the significant fact that no assertion of such
217 indebtedness was made by the personal representatives of Alexander Chataing until the year 1892. This non-claim for a period considerably more than fifty years is inexplicable except upon the hypothesis of full satisfaction in the lifetime of Chataing.

To hold that the debt of 4,400 pesos was payable only out of money to be received by Idler from the government of Venezuela, we think, would be to give a false effect to the paper of January 9, 1833. That writing did not create any debt, but was a formal acknowledgment before the escribano publico of a previously existing indebtedness. The paper, it seems to us, must be regarded as a collateral obligation. That this is a correct view is evinced by the subsequent acts of the parties. Thus regarding the transaction, we can understand how it happened that Idler made payments to Chataing on account of the debt. Is it to be supposed that the parties intended that Chataing was not to be paid at all if the government of Venezuela *nade* paid Idler? That conclusion would contravene the plainest principles of justice. True, the writing states

that Chataing "accepts it according to law and agrees to wait;" but how long was he to wait? Was he to forbear forever? Can it be that Chataing had so bound himself that no proceedings could be had upon his original and principal cause of action, notwithstanding the refusal of Venezuela to pay Idler and the action of the courts in vacating Idler's judgment? We think not. The utmost effect that can justly be attributed to Chataing's agreement to wait is that he was to allow Idler a reasonable time for the collection of the money which the government owed him.

Whether the statute of limitations commenced to run in the lifetime of Chataing we need not decide. We are entirely satisfied, however, that the presumption of payment which arises
218 after the lapse of twenty years applies here. The presumption is applicable to every species of security for the payment of money, whether bond, mortgage, judgment, or recognizance—to debts of all descriptions not barred by the statute of limitations—and until the presumption is rebutted the instrument does not furnish even *prima facie* evidence of indebtedness. Van Loon *v.* Smith, 103 Pa., 238; Lash *v.* Von Neida, 109 Pa., 207; Biddle *v.* Bank, 109 Pa., 349.

Now, it is satisfactorily shown that by the law of Venezuela at all times the heir, whether under a will or *ab intestato*, is considered to be the same person as the deceased and succeeds the deceased directly in all his rights and title in and to the property, whether real or personal, which forms the estate from the very moment of the death and is invested with the right to demand, sue for, collect, and recover all claims and debts due to the deceased. This so appears from the affidavit (taken, by agreement, with the same effect as a deposition under a rule of court) of José Ignacio Rodriguez, a doctor of civil law, etc. This affidavit, while taken after the trial before the jury, was for use before the court upon the hearing of the rule for judgment upon the questions of law reserved, and is therefore to be treated as part of the record, at least so far as concerns the reserved questions of law, and the reservation of the defendants' twelfth point covers the question now under discussion.

The law of Venezuela, then, being as stated, it follows that the heirs of Alexander Chataing had the right to demand and receive payment of the debt of 4,400 pesos mentioned in the paper of January 9, 1833, if any part of it remained unpaid. Therefore the presumption of payment is operative here, although no admin-
219 istrator had been appointed in the State of Pennsylvania. Administration was, indeed, necessary in order to maintain a suit in the State of Pennsylvania, but not at all for the purpose of the receipt and acquittance of this debt, and the presumption of payment applies and should be enforced.

Foulk *v.* Brown, 2 Watts, 209, 215, 217. There a suit was brought in the year 1829 by Lewis Foulk, administrator of Isabella Foulk, his deceased wife, against the executor of William Brown, deceased, to recover a legacy bequeathed to Isabella. The testator died in 1802 and Isabella Foulk in 1804. The presumption of payment

arising from the lapse of twenty years was set up against the plaintiff. To meet this defense he set up the want of administration, but without avail. The court said: "Now, although it is true that in order to sustain a suit for this legacy after his wife's death the plaintiff would have been obliged to take out letters of administration, yet that was a ceremony at all times in his own power to resort to. He had but to ask and would have received them as a matter of course. His disability to sue was a voluntary one. How, then, can he set up his own laches and indolence in this respect, or how does it show that he was not paid?" The point of this decision was that, as the plaintiff as surviving husband had acquired the right to the legacy, the presumption of payment arose even in the absence of administration. The principle applies here, and the following observations of the supreme court — Pennsylvania made in that case are very pertinent: "The rule of presumption, when traced to its foundation, is a rule of convenience and policy, the result of a necessary regard to the peace and security of society. No person ought to be permitted to lie by whilst transactions can be fairly investigated and justly determined until time has involved them in uncertainty and obscurity and then ask for an inquiry. Justice
220 cannot be satisfactorily done when parties and witnesses are dead, vouchers lost or thrown away, and a new generation has appeared on the stage of life unacquainted with the affairs of a past age and often regardless of them."

We entertain no manner of doubt that at least as early as the decision of the supreme court of justice of Venezuela affirming the vacation of Idler's judgment the heirs of Alexander Chataing had the right to demand payment of the balance, if any, of the debt of 4,400 pesos. But even upon the plaintiff's view the presumption of payment had closed against the debt before this suit was brought, for in the year 1871 the defendants received out of moneys paid by Venezuela on the Idler claim a sum in excess of the debt.

Upon the whole record we are of the opinion that the court below should have entered judgment for the defendants on the reserved points, and, following the practice laid down in Insurance Companies *v.* Boykin, 12 Wall., 430, we will enter the judgment which that court ought to have rendered.

The judgment of the circuit court is reversed, and it is ordered that judgment be entered in favor of the defendants below (the plaintiffs in error) upon the questions of law reserved *non obstante veredicto.*

Endorsed: William Idler *et al.*, administrators *d. b. n.* of Jacob Idler, dec'd, plaintiffs in error, *v.* Charles L. Borgmeyer, administrator of Alexander Chataing, dec'd, defendant in error. No. 3. September term, 1894. Opinion of the court. Filed January 22, 1895. Wm. V. Williamson, clerk.

221 And afterwards, to wit, on the twenty-fifth day of January, A. D. 1895, the court enters the following order, to wit:

United States Circuit Court of Appeals, Third Circuit, September Term, 1894.

WILLIAM IDLER and JOHN W. HAZELTINE, Citizens of the State of Pennsylvania, Administrators *de bonis non* of the Estate of Jacob Idler, Deceased, Plaintiffs in Error,
vs.
CHARLES L. BORGMEYER, a Citizen of the State of New Jersey, Administrator of the Estate of Alexander Chataing, Deceased.
} No. 3.

In error to the circuit court of the United States for the eastern district of Pennsylvania.

This cause came on to be heard on the transcript of record from the circuit court of the United States for the eastern district of Pennsylvania, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court in this
222 cause be, and the same is hereby, reversed with costs.

And it is further ordered that judgment be entered in favor of the defendant- below (plaintiffs in error) upon the questions of law reserved *non obstante veredicto*.

Philadelphia, January 25, 1895.

WM. BUTLER, *J.*

Endorsed: United States circuit court of appeals, third circuit. No. 3. September term, 1894. Wm. Idler *et al.*, administrators *d. b. n.* of the estate of Jacob Idler, dec'd, plaintiffs in error, *vs.* Charles L. Borgmeyer, administrator of Alexander Chataing, dec'd. Judgment. Entered and filed January 25, 1895. Wm. V. Williamson, clerk.

223 In the United States Circuit Court of Appeals for the Third Circuit, September Term, A. D. 1894.

WILLIAM IDLER and JOHN W. HASELTINE, Administrators *de bonis non* of Jacob Idler, Deceased, Plaintiffs in Error,
vs.
CHARLES L. BORGMEYER, Administrator of Alexander Chataing, Deceased.
} No. 3.

Assignment of Errors.

Now comes the above-named defendant in error, by his attorneys of record, and assigns the following manifest errors appearing in the opinion and judgment of the United States circuit court of appeals for the third circuit, rendered herein on the 22d day of January, A. D. 1895, as ground upon which said judgment should be reversed:

1. Error in the construction placed upon the terms of the treaties between the United States of America and the United States of

Venezuela, proclaimed May 29, 1867, and June 4, 1889, which provided for the adjustment of the claims of citizens of the former country against the government of the latter by a mixed commission.

224 2. Error in deciding that the claim of Jacob Idler and his associates against the United States of Venezuela, which claim had become merged in the judgment of the juez de letras de hacienda, dated September 18, 1832, and affirmed October 1, 1832, by the superior court, and December 6, 1832, by the supreme court of Venezuela, was not recognized as correct, or even as existing, by the terms of either of the said treaties.

3. Error in deciding that the judgment of the juez de letras, dated September 18, 1832, and affirmed by the superior court and supreme court of Venezuela as aforesaid, was in effect nullified and set aside by the judgment of the supreme court of Venezuela, dated February 22, 1839, in the proceeding of "*restitutio in integrum*," and that the original controversy between Jacob Idler and the United States of Venezuela was by such last-mentioned judgment opened up anew.

4. Error in deciding, contrary to the solemn judgments of two international tribunals, convened pursuant to the terms of said treaties between the United States of America and the United States of Venezuela, and especially constituted *ad hoc*, that the judgment of the juez de letras, dated September 18, 1832, and affirmed as aforesaid, was by the later judgment, rendered in the proceeding of *restitutio in integrum*, absolutely nullified, and that the said judgment of the supreme court of Venezuela rendered in such proceeding must be accepted as conclusive upon this point.

225 5. The proceedings of *restitutio in integrum* having been conducted in the absence of Jacob Idler and without notice to him, and the judgment of the supreme court of Venezuela rendered therein on the 22d day of February, A. D. 1839, having been for that reason by the two United States and Venezuela mixed commissions held to be contrary to the course of natural justice and therefore void, it was error for the United States circuit court of appeals for the third circuit in a collateral proceeding to decide that the said proceeding was properly conducted, and that the judgment of the said supreme court of Venezuela, although condemned as aforesaid, must be taken as conclusive on that point.

6. Error in deciding that the courts of the United States are bound by a judgment of the supreme court of a foreign country, notwithstanding such judgment has been pronounced null and void by an international tribunal duly constituted for the purpose of considering the validity thereof.

7. The Government of the United States of America having made representations to the government of the United States of Venezuela concerning the claims of citizens of the former country against the latter, which representations resulted in the convening of two successive mixed commissions pursuant to treaty stipulations entered into between the respective powers, which mixed com-

missions were sworn to "carefully examine and impartially decide according to justice and in compliance with the provisions
226 of this convention all claims submitted to them in conformity herewith," it was error to decide that the Government of the United States of America never undertook to enforce as against Venezuela the payment of the judgment of the juez de letras, September 18, 1832, as affirmed by the superior courts, but merely exercised in that regard in a friendly manner its "good offices" in behalf of Idler and his co-claimants.

8. The United States and Venezuela mixed commissions of 1868 and 1890 having both distinctly based their awards in favor of the "Idler claim" upon the judgment of the juez de letras of September 18, 1832, it was error to decide—

(*a.*) That the ground upon which the mixed commissions based their respective awards was immaterial.

(*b.*) That payment of Idler's claim against the government of Venezuela was ultimately made by virtue of the action of an independent tribunal proceeding upon original grounds.

(*c.*) That nothing was paid to Idler or his representatives or associates by Venezuela on the footing of the judgment of September 12, 1832.

(*d.*) That the application of the terms of the contract of September 25, 1832, herein sued upon, "to the state of affairs brought about more than half a century afterwards by the award made by a mixed commission acting under an international treaty would be a perversion of the paper and would work the greatest injustice to the estate of Idler."

227 (*e.*) That to the result brought about by the award of said mixed commission neither Chataing nor his personal representatives contributed aught.

(*f.*) That it was not a matter of any consequence that "in pressing their claim before the mixed commissions Idler's administrators relied upon the Venezuelan judgment of 1832."

9. Error in assuming and deciding that the parties to the contract, dated September 25, 1832, in suit contemplated at the time of the making thereof only "the voluntary payment of the judgment" of the juez de letras of September 18, 1832, "by Venezuela, and this within a reasonable period." * * * Such assumption and conclusion imports into said contract an element not found within its four corners nor supported by extrinsic evidence.

10. Error in deciding that the debt of four thousand four hundred (4,400) pesos, evidenced by the contract in writing dated January 9, 1833, and herein sued upon, was payable otherwise than out of and from money to be received by Idler or his personal representatives from the government of Venezuela.

11. Error in deciding that the written contract of January 9, 1833, was a mere collateral obligation to the previously existing indebtedness, such inference not being warranted by the terms of the instrument itself nor supported by any evidence submitted in the case.

228 12. Error in deciding that any evidence was adduced by the defendant tending to show that the indebtedness secured by the written contract of January 9, 1833, had been discharged in the lifetime of Alexander Chataing.

13. Error in deciding that the presumption of payment which arises after the lapse of twenty (20) years has any application in this case.

14. The affidavit of Jose Ignacio Rodriguez having been submitted to the trial judge in support of a motion for a new trial upon the ground of after-discovered evidence and said motion having been expressly overruled on the ground that the said affidavit set forth no matter that could not easily have been discovered prior to trial, it was error on the part of the circuit court of appeals to consider for any purpose said affidavit as forming a part of the record in the cause.

15. It was error to base any conclusion in this case upon the supposed course of the law of Venezuela with reference to the "succession" of decedents, no evidence tending to prove said course of Venezuelan law having been introduced on the trial of the cause.

16. Error in deciding that the questions of law reserved by the learned circuit judge should have been ruled in favor of the defendants.

17. Error in deciding that the reserved questions of law should have been decided in favor of the defendant *non obstante veredicto.*

229 18. Error in directing the circuit court of the United States for the eastern district of Pennsylvania to enter judgment in favor of the defendants upon the questions of law reserved *non obstante veredicto.*

19. Error in not affirming the judgment of the United States circuit court for the eastern district of Pennsylvania.

Wherefore and for other manifest errors the said Charles L. Borgmeyer, administrator, by his attorneys of record, saith that the said judgment of the United States circuit court of appeals for the third circuit should be reversed so that justice may be done between the parties hereto.

S. F. PHILLIPS,
F. D. McKENNEY,
Attorneys for C. L. Borgmeyer, Adm'r of Alexander Chataing, Deceased.

March 1, 1895.

Endorsed: In the United States circuit court of appeals for the third circuit, September term, A. D. 1894. No. 3. William Idler and John W. Haseltine, administrators *de bonis non* of Jacob Idler, deceased, *vs.* Charles L. Borgmeyer, administrator of Alexander Chataing. Assignment of errors. Filed March 2, 1895. Wm. V. Williamson, clerk.

230 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the United States circuit court of appeals for the third circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said United States circuit court of appeals, before you or some of you, between William Idler and John W. Hazeltine, administrators *de bonis non* of the estate of Jacob Idler, deceased, *are* plaintiffs in error, and Charles L. Borgmeyer, administrator of the estate of Alexander Chataing, deceased, *is* defendant in error, a manifest error hath happened, to the great damage of the said Charles L. Borgmeyer, administrator of the estate of Alexander Chataing, deceased, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the ninth day of March, in the year of our Lord one thousand eight hundred and ninety-five.

Seal of the Supreme Court of the United States.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

231 UNITED STATES OF AMERICA, *ss:*

To William Idler and John W. Hazeltine, administrators *de bonis non* of the estate of Jacob Idler, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the United States circuit court of appeals for the third circuit, wherein Charles L. Borgmeyer, administrator of the estate of Alexander Chataing, is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error men-

tioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable David J. Brewer, associate justice of the Supreme Court of the United States, this ninth day of March, in the year of our Lord one thousand eight hundred and ninety-five.

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

232 Service of the within citation is accepted for William Idler and John W. Hazeltine, adm'rs *de bonis non* of Jacob Idler, dec'd.

March 11, 1895.

EDWARD H. WEIL,
M. HAMPTON TODD,
Att'ys for Idler and Hazeltine.

233 Know all men by these presents that we, Charles L. Borgmeyer, administrator of the estate of Alexander Chataing, as principal, and Charles L. Borgmeyer and Henry R. Edmunds, as sureties, are held and firmly bound unto William Idler and John W. Hazeltine, administrators *de bonis non* of the estate of Jacob Idler, deceased, in the full and just sum of one thousand (1,000) dollars, to be paid to the said William Idler and John W. Hazeltine, administrators *de bonis non* of the estate of Jacob Idler, deceased, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this first day of March, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas lately, at a term of the United States circuit court of appeals for the third circuit, in a suit depending in said court, between Charles L. Borgmeyer, administrator of the estate of Alexander Chataing, plaintiff and defendant in error, and William Idler and John W. Hazeltine, administrators *de bonis non* of the estate of Jacob Idler, defendants and plaintiffs in error, a judgment was rendered against the said Charles L. Borgmeyer, administrator of the estate of Alexander Chataing, and the said Charles L. Borgmeyer, administrator of the estate of Alexander Chataing as aforesaid, having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court of appeals for the third circuit to reverse the judgment in the aforesaid suit, and a citation, directed to the said William Idler and John W. Hazeltine, administrators *de bonis non* of the estate of Jacob Idler, deceased, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at the city of Washington within thirty days:

Now, the condition of the above obligation is such that if the said Charles L. Borgmeyer, administrator of the estate of Alexander Chataing, shall prosecute his writ of error to effect and answer all

damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

CHARLES L. BORGMEYER, [SEAL.]
Administrator of the Estate of Alexander Chataing.
CHARLES L. BORGMEYER. [SEAL.]
HENRY R. EDMUNDS. [SEAL.]

Sealed and delivered in presence of—
—— ——.
—— ——.

Approved by—
DAVID J. BREWER, *Justice.*

234 STATE OF PENNSYLVANIA, }
City of Philadelphia. }

Charles L. Borgmeyer, being first duly sworn, deposes and says that he is possessed of property worth more than $1,000 in excess of all his just debts and liabilities.

CHARLES L. BORGMEYER.

Subscribed and sworn to before me this 2nd day of March, A. D. 1895.

[NOTARY SEAL.] ERNEST HOWARD HUNTER,
Notary Public in and for the State of Pennsylvania Residing in the County of Philadelphia.

STATE OF PENNSYLVANIA, }
City & County of Philadelphia. }

Henry R. Edmunds, being first duly sworn, deposes that he is possessed of property valued at more than $1,000 in excess of all his just debts and liabilities.

HENRY R. EDMUNDS.

Subscribed and sworn to before me this second day of March, A. D. 1895.

[NOTARY SEAL.] CHARLES WELSH EDMUNDS,
Notary Public in and for the State of Pennsylvania Residing in the County of Philadelphia.

235 UNITED STATES OF AMERICA, *sct:*

I, William V. Williamson, clerk of the United States circuit court of appeals for the third circuit, do hereby certify *that* the foregoing pages from one to two hundred & thirty-four to contain a full, true, complete, and faithful copy of the original transcript of the record and proceedings in the case of William Idler and John W. Hazeltine, citizens of the State of Pennsylvania, administrators *de bonis non* of the estate of Jacob Idler, deceased, plaintiffs in error, *vs.* Charles L. Borgmeyer, a citizen of the State of New Jersey, administrator of the

estate of Alexander Chataing, deceased, on file and now remaining among the records of the said court in my office, with the exception of the contract in Spanish "Sello quinto para el ano economico," etc., and contract in Spanish marked "B," as the record contains translations of the Spanish documents marked "A" and "B;" also Exhibit No. 4, "Approval of Mr. Idler's accounts by General Intendente Escalona;" Exhibit No. 9, "Award and liquidation by Mr. G. B. Sprotto;" Exhibit No. 10, "Law enacted by the constituent congress of Venezuela October 14th, 1830, for the 'organization of the treasury and the management of its affairs;'" Exhibit No. 11, "Opinion of the fiscal de hacienda, or solicitor of the treasury;" Exhibit No. 12, "Decision of the treasury court—juz-ado de letras de hacienda;" Exhibit No. 13, "Decision of the supreme court ordering a revision of Mr. Sprotto's award to be made;" Exhibit No. 14, "Decision of the supreme court reversing the decision of the superior court;"
Exhibit No. 15, "Appointment of José Cadenas as umpire;"
236 Exhibit No. 16, "Report and award of Señor José Cadenas;"
Exhibit No. 17, "Decree of the court ordering Mr. Cadenas' report to be communicated to both parties;" and Exhibit No. 18, "Assent of both parties to Mr. Cadenas' award," and Spanish copies of the various treaties, as the record from pages 119 to 143, inclusive, contains translations of the Spanish documents.

Seal United States Circuit Court of Appeals, Third Circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this 26th day of March, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and nineteenth.

WM. V. WILLIAMSON,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

Endorsed on cover: Case No. 15,856. U. S. circuit court of appeals, third circuit. Term No., 972. Charles L. Borgmeyer, administrator of the estate of Alexander Chataing, deceased, plaintiff in error, *vs.* William Idler and John W. Hazeltine, administrators *de bonis non* of the estate of Jacob Idler, deceased. Filed April 4th, 1895.

No. 902 October Term, 1894.

APR 29
JAMES H. McKENNEY
CLERK

Supreme Court of the United States.

Charles L. Borgmeyer, Administrator of the Estate of Alexander Chataing, deceased, Plaintiff in Error,

vs.

William Idler, and John W. Haseltine, Administrators *de bonis non* of the Estate of Jacob Idler, deceased.

IN ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

Brief for Defendants in Error on Motion to Dismiss or Affirm.

M. HAMPTON TODD,
EDWARD H. WEIL,
Counsel for Defendants in Error.

NOTICE OF MOTION.

SIRS:—You are hereby notified that the within motion, with the brief annexed thereto, will be presented to the Supreme Court of the United States on Monday, the fifteenth day of April, 1895, at the convening of the Court.

M. HAMPTON TODD,
EDWARD H. WEIL,
Counsel for Defendants in Error.

To Messrs. H. R. EDMUNDS and
PHILLIPS & MCKENNEY,
Counsel for Plaintiff in Error.

Allen, Lane & Scott, Prs., Phila.

SUPREME COURT OF THE UNITED STATES.

October Term 1894 No. 772.

Charles L. Borgmeyer, Administrator of the Estate of Alexander Chataing, deceased, Plaintiff in Error,

vs.

William Idler and John W. Haseltine, Administrators de bonis non *of the Estate of Jacob Idler, deceased.*

MOTION TO DISMISS OR AFFIRM.

Now come counsel for defendants in error in the above-entitled cause, and move the court to dismiss the writ of error herein on the ground that the court had no jurisdiction of this case; or, to affirm the judgment of the Circuit Court of Appeals for the Third Circuit, upon the ground that although the record may show that this court has jurisdiction, yet it is manifest that the writ of error was frivolous and was taken for delay only.

(Signed) M. HAMPTON TODD,
EDWARD H. WEIL,
Counsel for Defendants in Error.

STATEMENT OF THE CASE.

Suit was brought in the Circuit Court of the United States for the Eastern District of Pennsylvania by Charles L. Borgmeyer, a citizen of the State of New Jersey, administrator of the estate of Alexander Chataing, deceased, against William Idler and John W. Haseltine, citizens of the State of Pennsylvania, administrators *de bonis non* of the estate of Jacob Idler, deceased. The jurisdiction of the Circuit Court was dependent entirely upon the averment and the fact that the plaintiff and defendants were citizens of different States. The statement or declaration of plaintiff was upon a claim based upon two instruments in writing, one dated September 25th, 1832, made in Caracas, Venezuela, in the Spanish language, by which Jacob Idler agreed for himself and his associates to pay to Alexander Chataing a commission of ten per cent. upon a certain judgment rendered in favor of the associates in the courts of Venezuela, when and in such manner that Venezuela should make payment upon the same; and by the second paper, dated January 9th, 1833, also made in Caracas, Idler admitted that he owed Chataing 4400 pesos (about $4000), and further promised to pay Chataing out of the first moneys that should be paid by Venezuela upon this judgment. The defendants showed that Venezuela never paid the judgment and that her own courts had set it aside. Chataing died on August 30th, 1836. The claim of Idler and his associates, together with the claims of other citizens of the United States, were presented to and allowed by a mixed commission that sat in Caracas in 1868, under a treaty made between the United States and Venezuela in 1866. When the claim was prosecuted before this tribunal, Chataing had been in his grave thirty-two years, and none of his representatives took part in the prosecution of it, or were ever heard of. Subsequently, twenty-one years afterwards, the awards rendered by this commission were set aside by a treaty between our Government and Venezuela, and a new convention was entered into in 1889, providing for a new commission, which

sat in Washington in 1890, where all of the claims of citizens of the United States against Venezuela were presented *de novo*. An award was again made in favor of the Idler claim in the year 1890 by this second commission, fifty-four years after the death of Chataing. Upon the 15th of September, 1892, suit was brought by Borgmeyer, as administrator of Chataing, to recover this commission of ten per cent. on the paper of September 25th, 1832. This claim for a commission was therefore sixty years old, less ten days, and the claim upon the alleged indebtedness of 4400 pesos was over fifty-nine years old. Chataing, at the time of the bringing of this suit, had been in his grave fifty-six years. Idler died on the 26th of May, 1856, and at the time of the bringing of the suit to attempt to hold his estate liable had been buried thirty-six years. Payments were made in 1871 and 1876, on account of the awards under the first commission, by the State Department, to Mr. Idler's administrators, who filed their accounts of these moneys, and distribution was made in and by the orders and direction of the Orphans' Court of Philadelphia, more than twenty-one years prior to the institution of the suit. No demand had been made upon the administrators of Idler or any claim made before that court at the three accountings, that any indebtedness to Chataing existed or was ever heard of. At the trial, the Circuit Court directed a verdict for the plaintiff, reserving all the questions of law, and subsequently entered judgment in favor of the plaintiff on the verdict. The defendants obtained a writ of error from the Circuit Court of Appeals, which reversed the judgment of the Circuit Court, and entered judgment for the defendants, notwithstanding the verdict on the points of law reserved at the trial.

The Circuit Court of Appeals, Mr. Justice Shiras, and Judges Acheson and Dallas held:—

The record disclosed the fact that the Idler judgment in Venezuela had been swept away by the courts of that country, and nothing had been paid by Venezuela on the footing of that judgment.

To use the language of the Court of Appeals: "To apply, then, the writing of September 25th, 1832, to a state of affairs brought about more than half a century afterwards by the award of a mixed commission acting under an international treaty, would be a perversion of the paper and would work the greatest injustice to the estate of Idler. The whole situation had radically changed without his fault. His judgment had utterly failed him. The allowance of the claim was ultimately secured by the action of an independent tribunal proceeding upon original grounds. The favorable result was due to the personal exertions of Idler and his associates and the services, at a vast expense, of other agents and attorneys. All of this the evidence shows. To the result neither Chataing nor his personal representatives contributed aught."

The other defenses to this claim were the Statute of Limitations and the presumption of payment in analogy to the Statute of Limitations.

To the claim upon the other paper, for the 4400 pesos and interest, the Circuit Court of Appeals held that the proof of its actual payment by Idler in his lifetime was remarkably full, considering its antiquity, and that its non-assertion for over fifty years was inexplicable except upon the hypothesis of full satisfaction in Chataing's lifetime.

But independently of the proof of payment, the court held that the presumption of payment arose after the lapse of twenty years. The Court of Appeals then showed that even upon the plaintiff's own view, the moneys received in 1871, on the first award, were in excess of the debt, and the pre-

sumption of payment had closed against the debt before suit was brought.

ARGUMENT.

I.

Neither the constitutionality of any law of the United States nor the validity or construction of any treaty made under its authority was drawn in question, and the decision of the Circuit Court of Appeals is final under the sixth section of the Act of March 3d, 1891.

The language of the fifth section of the Act of March 3d, 1891, 26 Stat. L., 826, allowing appeals or writs of error from the District and Circuit Courts to the Supreme Court, is, among other cases: "In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority is drawn in question."

The twenty-fifth section of the Judiciary Act of 1789, 1 Stat. L., 85, giving jurisdiction, is as follows: "Or where is drawn in question the validity of a treaty or statute of, * * * or where is drawn in question the construction of any clause of the Constitution, or of a treaty, or statute of, or commission held under the United States."

Having shown from the brief statement of the case that the jurisdiction was derived solely by reason of diverse citizenship, it is respectfully submitted that the validity or construction of any treaty made under the authority of the United States was not drawn into question, and was not decided either by the Circuit Court or the Circuit Court of Appeals. It was part of the history of the case that moneys had been received upon two awards made by two international tribunals appointed under the provisions of two treaties. Neither party raised a doubt as to the validity of these treaties. The construction of these treaties was neither raised nor considered. The decision of the Commissioners could not be inquired into by the court, whether their awards were right or wrong, for their decision was final. The awards were in favor of Idler and his associates, and they surely could not complain that the decision in their favor was wrong. The plaintiff alleged, as the very foundation of his suit, that Idler had received moneys under these awards, and therefore and solely for this reason, the defendants were under an obligation to pay. Where and how the moneys were obtained were facts in the case upon which hinged the construction of certain papers executed by the parties. The decision of the Court of Appeals would have been precisely the same if the moneys had been paid under an award of any other tribunal, foreign, federal, or state, or award of arbitrators between the parties. That moneys were received and the source from which they came were facts, pertinent to the issue. The validity of the treaties that created the tribunal was not discussed, nor was any construction of any of the provisions of the treaties maintained on the one side and denied on the other. What were construed were the papers upon which the claims were founded. The identical question was raised in the clause of the Judiciary Act, similar to the Act of 1891, where the expression is, drawing in question the construction of any clause of the Constitution or of a treaty or statute of or commission held under the United States: Gill *vs.* Oliver, 11 Howard, 545; Williams, trustee, *vs.* Oliver, 12 Howard, 111. In these cases, awards had been obtained under a treaty

with Mexico. Both parties to the contests claimed under the awards of the commission appointed under that treaty; and this court held that the introduction of the treaty and its award as part of history to determine the rights of the litigants, did not, in any way, involve the validity of the treaty or its construction.

We quote from the opinion of Mr. Justice Grier, in the first case, 11 Howard, as the strongest and clearest presentation of the question we can give (page 545) :—

"We have sought in vain through the record of this case to find any question raised directly by the pleadings, or 'by clear and necessary intendment therefrom,' touching the validity of any treaty, statute, or authority exercised under the United States.

"Both parties claim certain moneys in court as assignees of Lyde Goodwin, who was a member of the 'Baltimore Mexican Company,' and entitled to a certain proportion of the money awarded to said company as a just claim on the Mexican Government. The validity of the award, or the treaty under which it was made, is not called in question by either party, as both claim under them. In order to ascertain the effect of certain previous assignments made by Lyde Goodwin, the history of the origin of his claim necessarily makes a part of the case.

"The treaty and award are introduced as a part of this history, as facts not disputed by either party. The money being in court, both the treaty and the award were *functi officio*, and no decision of the rights of the claimants *inter se* can, in the nature of the case, involve the validity of either." * * *

Pages 546–7 :—

"We are equally at a loss to discover in this record where or how 'the construction of any clause of the Constitution, or of a treaty or statute of, or commission held under, the United States,' is drawn in question in this case.

"As we have already said, both parties claim money in court, and in order to test the value of their respective assignments from Lyde Goodwin, introduce the history of the claim from its origin.

"The treaty and award are facts in that history. They were before the court but as facts, and not for construction. If A. hold land under a patent from the United States or a Spanish grant ratified by treaty, and his heirs, devisees, or assignees dispute as to which has the best title under him, this does not make a case for the jurisdiction of this court under the twenty-fifth section of the Judiciary Act. If neither the validity nor construction of the patent or title under the treaty is contested, if both parties claim under it, and the contest arises from some question without or *dehors* the patent or the treaty, it is plainly no case for our interference under this section.

"That the title originated in such a patent or treaty is a fact in the history of the case incidental to it, but the essential controversy between the parties is without and beyond it. So in this case, both claim the money in court. It is a fact that the money has been paid by the Republic of Mexico on a claim which has

been pronounced just and equitable by commissioners under the convention of 1839." * * *

Page 548:—

"Whether this money paid into court under the award, and first acknowledged by Mexico as a debt in 1825, existed as a debt transferable by the Maryland insolvent laws in 1817, or whether it for the first time assumed the nature of a chose in action transferable by assignment after 1825, when acknowledged of record by Mexico, and passed by the assignment of Lyde Goodwin to Robert Oliver, was a question wholly *dehors* the treaty and award, and involving the construction of the laws of Maryland only, and not of any treaty or statute or commission under the United States."

This question was again before this court, reported as Williams, Trustee, *vs.* Oliver, in 12 Howard, 111, arising out of moneys paid under this Mexican treaty. Mr. Justice Daniel delivered the opinion, and begins as follows: "This case is not distinguishable from the case decided at the last term of Gill *vs.* Oliver's Executors, and which was dismissed for want of jurisdiction." The opinion then reviews this latter case, adopts the views expressed in the opinion of Mr. Justice Grier, and ends as follows: "For the reason, therefore, that this case falls directly within the decision of Gill *vs.* Oliver's Executor's, 11 How., 529, and is not distinguishable from it, the case must take the same direction, and be dismissed for want of jurisdiction."

These decisions were cited and approved, and the principle applied in the case of the Baltimore & Potomac R. R. Co. *vs.* Hopkins, 130 U. S., 225, and where other decisions of this court are referred to upon this question. "There was no

dispute about the Federal right itself, but about the consequences of what had been done by the parties in respect to it," was said by this court in the case of Adams Co. *vs.* Burlington R. R. Co., 112 U. S., 123, and upon this ground the writ was dismissed for want of jurisdiction.

II.

Even if the validity of a treaty, or its construction, had been presented for consideration, which we respectfully submit was not the case, still if there were independent grounds to base the judgment of the court, the Supreme Court will not take jurisdiction, even though it might think the position of the lower court an unreasonable one.

The authorities on this point are numerous, among which are: Klingler *vs.* Missouri, 13 Wall., 257; Brown *vs.* Atwell, 92 U. S., 327; Citizens' Bank *vs.* Board of Liquidation, 98 U. S., 140; Choteau *vs.* Gibson, 111 U. S., 200; Adams County *vs.* B. & M. R. R. Co., 112 U. S., 123; Detroit City Ry. Co. *vs.* Guthard, 114 U. S., 133; New Orleans Water Works *vs.* Louisana Sugar Refining Co., 125 U. S., 18; De Saussure *vs.* Gaillard, 127 U. S., 234.

In the case of Johnson *vs.* Risk, 137 U. S., 300, where there were two grounds of defense, each broad enough to defeat recovery, it was held that the defense of the Statute of Limitations, unless so palpably unfounded that the Supreme Court must presume that the lower court overruled it, will dismiss a writ of error, although the record showed that one of the grounds of defense involved the construction of the United States Bankrupt Act of 1867.

III.

The decision of the Circuit Court of Appeals is final in all cases where the jurisdiction is dependent upon the opposite parties to the suit being citizens of the different States, and a

writ of error will not lie from the Supreme Court to review its judgments or decrees: Lau Ow Bew *vs.* the U. S., 144 U. S., 47.

This decision in Lau Ow Bew's case, was cited and approved in the case of the Northern Pacific R. R. Co. *vs.* Amato, 144 U. S., 465. In the latter case, it was shown by the opinion of Mr. Justice Blatchford, that the jurisdiction of the Circuit Court depended upon the fact that the defendant was a corporation created by an Act of Congress, and that the suit arose under a law of Congress without reference to the citizenship of the plaintiff. His citizenship was not mentioned in the complaint or in the petition for removal, and the petition states that the action arose under an Act of Congress; "nor," says the learned judge, "was the decision of the Circuit Court of Appeals in effect made final, as in Lau Ow Bew, 144 U. S., 47." Having shown that this court had jurisdiction by writ of error, but that there was little merit in the case, the opinion continues, "we are of opinion that under clause 5 of rule 6 of this court the judgment of the Circuit Court of Appeals must be affirmed, on the ground that there was color for the motion to dismiss, and that the writ was for delay only."

IV.

The allowance of a *certiorari* to the Circuit Court of Appeals, in which its decisions are final, should be exercised sparingly and with great caution; questions of gravity and importance solely should be certified for instructions by that court, and only when such questions are involved should the power of the Supreme Court be invoked to bring up a case where the decision of the Court of Appeals is final: *Ex parte* Lau Ow Bew, 141 U. S., 583.

The Circuit Court of Appeals was created for the very purpose of relieving this court of burdens, and relieving

delayed suitors in the pursuit of justice, and the interposition of this court is to be invoked only for matters of gravity and general importance: *In re* Woods, 143 U. S., 202, Lau Ow Bew *vs.* U. S., 144, U. S., 47.

V.

Conceding, for the sake of argument merely, that a writ of error would lie, the judgment should be affirmed, upon the ground that there is color for the motion and that the writ was taken for delay only.

Two claims were made against the estate of a decedent, after two generations nearly had passed away, one destitute of any foundation in law or equity and barred, even if meritorious, by statutes of repose made for the living as well as for the dead; the other, shown by the Court of Appeals to have been actually paid more than fifty years before the suit, upon evidence regarded by the court as remarkably full, and presumed by law to have been paid, after so long a lapse of time and of non-presentation for more than half a century. These pregnant facts, it is respectfully submitted, are considerations which need no argument to be added to the prayer of the petition to affirm the unanimous judgment of the Circuit Court of Appeals, upon the ground that there is color from the motion and that the writ was taken for delay only. We annex hereto, as an appendix, the opinion of the Circuit Court of Appeals, filed in this case.

It will be perceived that the Circuit Court of Appeals did not discuss, in any manner, the validity of any treaty or the construction of any treaty, but referred to the treaties and awards as facts in the case.

M. HAMPTON TODD,
EDWARD H. WEIL,
For the Defendants in Error.

APPENDIX.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD DISTRICT.

William Idler et al., *Administrator* de bonis non *of Jacob Idler, deceased, Plaintiffs in Error,*

vs.

Charles L. Borgmeyer, Administrator of Alexander Chataing, deceased, Defendant in Error.

Error to the Circuit Court of the United States for the Eastern District of Pennsylvania.

Before Shiras, circuit justice; Acheson and Dallas, circuit judges.

ACHESON, Circuit Judge:

This was a suit brought on September 15th, 1892, by Charles L. Borgmeyer, administrator of Alexander Chataing, deceased, against William Idler and John W. Haseltine, administrators *de bonis non* of Jacob Idler, deceased. Alexander Chataing was a citizen of Venezuela and a resident of the city of Caracas, where he died on August the 20th, 1833. Letters of administration upon his estate were granted on September 14th, 1892, the day before this action was commenced. Jacob Idler, who resided in Philadelphia, died there May 26th, 1856. His widow administered on his estate, and upon her death, more than twelve years later, letters of administration *de bonis non*, dated December 16th, 1869, were granted to the defendants. The defendants settled administration accounts in the Orphans' Court of Philadelphia, and the moneys which had been received by them were distributed under the orders of that court. No claim on behalf of the

estate of Alexander Chataing was ever made against Jacob Idler, nor was any such claim made against his personal representatives until the year of 1892.

The plaintiff's statement of claim sets forth as grounds of action two instruments of writing (the originals of which are in the Spanish language), one dated September 25th, 1832, and the other January 9th, 1833.

Before giving translations of these papers it should be premised that between the years 1817 and 1819 Jacob Idler, acting for himself and his associates in the enterprise—they all being citizens of the United States—furnished military supplies to Venezuela.

They claimed that a large balance was due them on that account. Disputes arose between that government and Idler, and the latter went to Venezuela about 1823 to effect a settlement. A prolonged litigation between the government and Idler in the courts of Venezuela ensued. On September 18th, 1832, the Juez de Letras, the Treasury Court, an inferior tribunal, adjudged that the government was indebted to Idler in the sum of $70,520.11½. In this state of affairs the first of the two above-mentioned writings was executed. The translations furnished us read thus:—

[SEAL] (Fifth Seal for the economic year 1832–1833; value A Real).

Be it known by this document that I bind myself to pay to Senor Alexander Chataing, as well on my own account as upon that of my absent associates a commission of Ten per cent. upon the amount of the payment that I am claiming from the government of Venezuela, on account of supplies that I made to the aforesaid government in the year of 1817 to 1820, as soon as the payment or satisfaction is realized which the aforesaid government has to make me in virtue of a judgment of the senor "Juez de Letras," issued on the 18th of the current month. I declare that the aforesaid commission of Ten per cent. has been well merited and gained by Senor Alexander Chataing, on account of the assistance that he has given me during the prolonged suit which he has pur-

sued against the government, and on account of the numerous act of diligence which he has performed to that purpose; and in conclusion, on account of the entire direction which he has given to the matter, although no publicly given power has authorized him, since he has discharged exactly, and with my consent, in all details—the matter referred to as an honest and careful attorney. For which reason I have given him the aforesaid commission of Ten per cent. upon the whole amount that the government has to pay me; *i. e.*, as well upon the principal as upon the interest that I claim from the State. I will make payment of the aforesaid commission of Ten per cent. in the same way that the government makes it to me, that is to say, if it makes it to me by instalments in metal, I will pay the commission as well in metal by instalments in *pro rata* of the sum that I receive at each instalment; and if the government makes me the payment in treasury notes or bonds for the whole amount, or whatever other note, in the same way I will make payment of the aforesaid condition in the same specie form of treasury notes or bonds. I desire that this document shall have the same force as if it had been a public writing, and renounce all laws that could favor me; in virtue of which I sign the present document in the presence of three witnesses.

JACOB IDLER.

CARACAS, September 25th, 1832.

(The word "ano" amended. Vale.)

Witness,
FRANCO RIBAS.
Witness,
JN. ZERESA.
Witness,
CIPRIANO MORALES.

What particular services Chataing rendered in procuring the judgment does not appear, and perhaps is a matter of no consequence; but in a letter dated Caracas, September 24th, 1831, from Mr. Idler to Mr. Chataing, the former, after alluding to the protracted litigation in which he had been

involved, and the mention of an appeal which the government had taken from a decision of Mr. Sprotto, a Referee in the case, said, "To avoid such an unjust loss to my associates, who served this government at a most critical epoch, I beg your assistance to retain justice, knowing the great influence you have with the persons who can prolong or end this costly suit, as per liquidation of Mr. Sprotto, so just and clear. By so doing, I will allow you for self and my associates, ten per cent. from the amount awarded and by the sentence; and when received to be paid to you in the same class of payments I receive from this government."

The translation of the other items in suit read thus:—

[SEAL]

Fifth Seal for the economic year 1852-1853, value two Reals.

I, Colonel Andres Ybarra, Principal Registrar of the Province, certify: That in the Registry of Public Instruments kept by the excribano, Juan Antonio Hernamdez, appears a writing of the following tenor:—

Obligation: In the City of Caracas on the 9th of January, 1833, before me, the escribano Publico, and witness, appeared Senor Jacob Idler, of this vicinity, and over twenty-five years of age, whom I certify that I know, and exhibited to me a ticket of the following tenor:—

Treasurer General of Venezuela:—Ticket No. 18:—January 9th, 1833; for 20 reals, which Senor Alexander Chataing has paid Registry Fee Dve. for 4000 pesos, which Senor Jacob Idler owes to him, and promises to pay by a writing agreed to by himself before the escribano Juan Antonio Hernamdez; 2 pesos for Reals. Copy of an entry made upon folio 2 of the Memorandum Book of this month.

CARACAS: Date as above.

(Signed) LECUNA–
SMITH

As literally appears by the original which remains in the Record of Officem in my charge, which I refer to and certify.

Whereupon he said: That he acknowledges that he owes

to Senor Alexander Chataing, also a neighbor, and of the "Comercio," the amount of 4400 pesos of 8 Reals of silver each, which in coined and current money of account to his satisfaction, the latter has furnished him since the 24th of September, 1831, for expenses of his subsistence and cost of the prolix and expensive suit pursued against the government of Venezuela in compensation for supplies made in the years 1817–1820 in virtue of a contract made for himself and absent associates, and granting to him proper receipt with renunciation of the laws of delivery exception of *non numerata pecunia*, proofs, etc., of the case—obliges himself to satisfy it executively with cost from the first funds that may be paid him by the government his debtor—with his person and estate, present and future, judicial power submission to this in order that it may compel and constrain him executively to its fulfillment as if it was by judgment given by consent and passed as a thing adjudged authoritatively, and making hereby renunciation of all laws, statutes, and rights in his favor, although it may be one that may be propitious and afford a valid exception. The creditor, whom also I certify that I know, being informed of the literal contents of this writing, that he accepted it according to law, and agrees to wait. Thus respectively have said granted and signed—Senores Luis Apesiegnia, Manuel Gallosoand, Lorenzo Callett of this vicinity (being witnesses)—Jacob Idler; Alexander Chataing: Before me Juan Antonio Hernandez, Escribano Publico.

The judgment of the Juez de Letras was affirmed by the Superior Court on October 1st, 1832, and on December 6th, 1832, the decision of the latter court was affirmed by the Supreme Court of Justice. The Venezuelan Government, however, refused to pay the judgment, or to recognize its validity, and in the year 1836 took steps in the Supreme Court of Justice to have the judgment annulled by the allowance of the remedy of *restitutio in integrum.* The matter was then so proceeded in that, on December 20th, 1838, the Superior Court made a decision granting to the government

the remedy of *restitutio in integrum* against decisions of September 18th and October 1st, 1832, and restoring the whole subject to the condition in which it was on August 31st, 1830, and this judgment of the Superior Court was affirmed on February 22d, 1839, by the Superior Court of Justice of Venezuela. The effect of the decision of the highest judicial tribunal of Venezuela was to set aside the judgment of the Juez de Letras of September 18th, 1832, and to open up the whole controversy.

No further proceedings with respect to the claim of Idler took place in the courts of Venezuela. He and his associates sought and obtained the friendly interposition of the United States in their behalf. Other citizens of the United States had claims against Venezuela. To all these claimants the Government of the United States lent its good offices, and as a result a convention was concluded on April 25th, 1866, between the United States and Republic of Venezuela for the adjustment of American claims upon the latter government. By the terms of this convention a mixed commission to sit at the city of Caracas was created, consisting of two members, one appointed by each government, and an umpire chosen by the two commissioners, to whom all claims of citizens of the United States against Venezuela were to be submitted for final decision. "The commissioners (it was stipulated) shall make such decision as they shall deem in reference to such claims conformable to justice, even though such decisions amount to an absolute denial of illegal pretentions, since the including of any such in this convention is not to be understood as working any prejudice in favor of any one, either as to principles of right or as to matters of fact." It was further stipulated that the commission should issue certificates for the sum to be paid claimants under its decisions; that all such sums should be paid to the Government of the United States.

Previously to the submission of the Idler claim to the mixed commission, and with a view thereto, Mrs. Idler, as administratrix of her deceased husband's estate, and her co-claimants referred to William H. Whiton disputes which had

long existed as to their respective interests in the claim, and it was agreed that, for his services in making the apportionment and in the preparation of the claim for presentation before the commission, Whiton should have one-third of the claim. Whiton performed these services and the arrangement was carried out. The claim being submitted to the mixed commission the two commissioners disagreed. The umpire, however, awarded to the claim the sum of $252,814. Nine certificates of equal amounts were issued therefor, three of which were delivered to the administrators of Idler's estate, three to their associates, and three to Whiton. Partial payments on account of the certificates were made by Venezuela to the United States, viz.: On June 17th, 1871, the sum of $17,696.98, and on May 16th, 1876, the further sum of $20,255.12. The State Department of the United States paid one-third of these sums to the administrators of Jacob Idler, one-third to their associates, and one-third to Whiton. No further payments were made on the award under the treaty of 1866.

On March 3d, 1883, the President of the United States approved a joint resolution of Congress providing for a new mixed commission, in accordance with the terms of the treaty with Venezuela of April 25th, 1856. That resolution, after reciting that serious charges affecting the validity and integrity of the proceedings of the former mixed commission had been made by the government of Venezuela, and also by divers citizens of the United States, who had presented claims for adjudication to the tribunal, requested the President to open diplomatic correspondence with Venezuela with a view to the revival of the general stipulations of the treaty of April 25th, 1866, and the appointment thereunder of a new commission, and also provided that from awards that might be made to claimants in moneys theretofore paid upon certificates upon awards made by the former commission should be deducted and such certificates deemed canceled. Accordingly, on December 5th, 1885, a new treaty was concluded between the two governments reviving the general stipulation of the former convention, adopting the provisions of the joint resolution of Congress, and provided for a new mixed commission,

composed of two commissioners and an umpire, whose decisions, or those of a majority of them, made, "as they shall deem" to be "conformable to justice," should be final and conclusive. To this new mixed commission the Jacob Idler claim was presented, and a majority of the commission made the following awards of the commissioners July 14th, 1890:—

Claim of Jacob Idler
vs.
United States of Venezuela.
No. 2.

The undersigned commissioners appointed under the convention between the United States of America and the United States of Venezuela for the reopening of the claims of the citizens of the United States against Venezuela under the treaty of April 25th, 1866, concluded at Washington December 5th, 1885, concurring in the decision herein, duly having heard the above claims and considered the evidence and arguments of counsel appertaining thereto, do decide that there should be and there is hereby awarded against the government of the United States of Venezuela in full satisfaction of the said claim the sum of $70,520 gold coin of the United States of America, with interest thereon at the rate of six per cent. per annum from October 1, 1832, to September 2d, 1890, inclusive, amounting in all after deducting the payments hereinbefore made, on account, of the former award, to the sum of $277,678.40, which sum is to be distributed and certificates issued therefore as follows:

Ninety-two thousand five hundred and fifty-nine dollars and forty-six cents to William Idler and John W. Haseltine, as administrators *d. b. n.* of Jacob Idler, deceased; $30,853.15 to Frederick J. Whiton; $92,559.47 to Henry L. Bogert, trustee; $30,853.16 to Mary L. Russell; and $30,853.16 to Cranimond Kennedy.

JNO. LITTLE,
JNO. V. L. FINDLAY,
Commissioners.

Upon the trial in the Circuit Court the defendants submitted the following point with respect to the ten per cent. commission payable to Chataing under the paper of September 25th, 1832 :—

5. The payments agreed to be made to Alexander Chataing for his services, as set forth in Exhibit B of plaintiff's statement, were contingent on Jacob Idler recovering satisfaction for his judgment against the government of Venezuela, in said exhibit being referred to.

This point the Circuit Court below affirmed. Other points relating to the same matter were submitted by the defendants and were reserved by the court. We will quote several of these reserved points as indicative of them all.

4. The construction of the contract for compensation is for the court. It was not in contemplation of the parties to the contract that Chataing should receive compensation for an award made by the international tribunal many years after his death, presented and prosecuted by other agents and attorneys. Venezuela having declined and refused payment, there can be no recovery based on an award made in Caracas in 1868 or in Washington in 1890, and the verdict must therefore, under all the evidence, be for the defendants.

6. The undisputed evidence in the case is that no payments have been made by the government of Venezuela on account of the judgment rendered against it, and which is set forth in said Exhibit B of plaintiff's statement, and therefore the verdict should be for the defendants.

9. The award in favor of Idler and his associates was made by the international commission, administering justice and equity for the supplies, &c., furnished by them to that government, and was a sentence or award after full examination of the merits of the claim, irrespective of the original sentence of the Venezuelan court.

10. By the decree of *restitutio in integrum* the judgment in favor of Idler and his associates was annulled in Venezuela. More than fifty years afterwards an international tribunal made an award to these parties, and the moneys they received were based upon that award, and there can be no recovery in this suit.

Eventually the court below decided the reserved points against the defendants, and entered judgment against them.

As is to be seen from its affirmance of the defendants' fifth point, the Circuit Court rightly considered that the payment to Alexander Chataing of the stipulated commission was contingent upon Jacob Idler's recovering satisfaction of the judgment he had obtained on September 18th, 1832, against the government of Venezuela. Evidently Idler and Chataing dealt with respect to that judgment. It, indeed, was the very basis of Idler undertaking to pay the commission. Undoubtedly they contemplated the voluntary payment of the judgment by Venezuela, and this within a reasonable period. Idler was to pay the commission in the same way that the government made payment to him, and at the same times. Was satisfaction of the judgment within the fair meaning of the paper of September 25th, 1832, ever realized? The Circuit Court was of the opinion that substantially the money was collected on the judgment, the court saying, "The money collected must be regarded as realized on the judgment, the fruits of its execution by the Government of the United States." In this view we are not able to concur. The United States never undertook to enforce the payment of the judgment. From first to last its action in this matter was strictly diplomatic and peaceful. It merely exercised in a friendly manner its good offices on behalf of Idler and his co-claimants. Had it gone beyond this it would have violated its settled policy with respect to claims of its citizens founded on their contracts with foreign governments. Wharton's Inter. Law Dig., section 231.

Moreover, the judgment of September 18th, 1832, was absolutely annulled. The decision of the Supreme Court of Justice of Venezuela is conclusive upon that point. It must

be observed that the final judgment of that tribunal in the litigation with Idler did not affect his contractual rights, but left them in full force. The decision was merely that the remedy of *restitutio in integrum* was open to the government and was applicable to Idler's case, and that the action of the Superior Court in granting that remedy, and thus reopening the case, was right. Could Alexander Chataign, a citizen of Venezuela, or those claiming under him, challenge anywhere the binding force of the judgment thus pronounced by the highest court of his own country? Surely the courts of this country are to respect that judgment. Elwrendorf *vs.* Taylor, 10 Wheat., 152, 159; Smith *vs.* Condry, 1st How., 28.

Idler's judgment having thus been swept away, the consideration for his promise to pay Chataign a commission thereon wholly failed. The event upon which the commission was to be paid never occurred. Very certain is it that nothing was paid by Venezuela to Idler or to his personal representatives on the footing of the judgment. To apply, then, the writing of September 25th, 1832, to the state of affairs brought about more than half a century afterwards by the award made by a mixed commission acting under an international treaty, would be a perversion of the paper, and would work the greatest injustice to the estate of Idler. The whole situation had radically changed without his fault. His judgment had utterly failed him. The allowance of the claim was ultimately secured by the action of an independent tribunal, proceeding upon original grounds. The favorable result was due to the long-continued personal exertions of Idler and his associates, and the services at a vast expense of other agents and attorneys. All of this the evidence shows. To the result neither Chataign nor his personal representatives contributed aught.

We do not consider it a matter of any moment that in pressing their claim before the mixed commissions Idler's administrators relied upon the Venezuelan judgment of 1832. That judgment was a part of the complicated transactions between the intestate and the government of Venezuela. It perhaps afforded some evidence of the correct amount of

the indebtedness in dispute, nor is it important how the majority of the commissioners regarded that judgment. Neither its correctness nor its existence was recognized by either of the treaties. The mixed commissions were to decide with reference to the merits of all claims submitted to them. The opinion filed on behalf of the majority of the last commission shows that the Idler claim was investigated and sustained by them upon its original merits. They were at liberty, had the facts so warranted, to have found against the claim altogether. That they awarded the face amount of the judgment with interest is of no consequence. The reasons for their award are immaterial here. The important fact is that whatever moneys Venezuela paid on the Idler claim were paid on the awards of the mixed commission, and not otherwise. Construing the paper of September 25th, 1832, with reference to its terms, its subject matter, and the situation of the parties, we conclude that no payment or satisfaction of the judgment therein recited was ever made or realized within the true intent of the parties, and that the stipulated commission to Chataing never became payable. It follows, therefore, that the reserved questions of law as pertaining to this branch of the case should have been decided in favor of the defendants.

To the plaintiff's demand upon the whole instrument in suit, the paper of January 9th, 1833, three defenses were set up, viz., first, payment in effect; second, the Statute of Limitations; third, presumption of payment arising from the lapse of twenty years. Under the first head uncontradicted evidence of a persuasive character was produced to show that this indebtedness was entirely discharged in the lifetime of Alexander Chataing. By a writing dated Caracas, May 15th, 1833, Chataing receipted for certain accounts due to Idler, amounting to $1051.65, left with him for collection, and a small amount of personal property to be sold on Idler's account. In a letter dated Caracas, June 6th, 1831, and addressed to Idler at Philadelphia, Chataing acknowledged payment by Idler of $1071.68 on this debt. Other correspondence shows that at different times Idler shipped mer-

chandise to Chataing upon his order. It is admitted that this correspondence on its face shows Idler to be entitled to an additional credit of $440.56. William Idler, a son of Jacob Idler, testified that to his personal knowledge his father made other shipments of goods to Chataing; that "there were a great many shipments made;" that Chataing paid nothing on those shipments; that, while not able to tell the exact amount of the shipments, he always believed that the whole debt of 4400 pesos had been paid, and that many of his father's books and papers had been lost or destroyed. Having regard to the antiquity of these transactions, the evidence of actual payment strikes us as remarkably full. It is to be considered, in connection with insignificant facts, that no assertion of such indebtedness was made by the personal representatives of Alexander Chataing until the year 1892. This non-claim for a period considerably more than fifty years is inexplicable, except upon the hypothesis of full satisfaction in the lifetime of Chataing.

To hold that the debt of 4400 pesos was payable only out of money to be received by Idler from the government of Venezuela, we think would be to give a false effect to the paper of 9th of January, 1833. That writing did not create any debt, but was a formal acknowledgment before the escribano publico of a previously-existing indebtedness. The paper, it seems to us, must be regarded as a collateral obligation. That this is a correct view is evinced by the subsequent acts of the parties. Thus regarding the transaction, we can understand how it happened that Idler made payments to Chataing on account of the debt. Is it to be supposed that the parties intended that Chataing was not to be paid at all if the government of Venezuela never paid Idler? That conclusion would contravene the plainest principles of justice. True, the writing states that Chataing "accepts it according to law, and agrees to wait," but how long was he to wait? Was he to forbear forever? Can it be that Chataing had so bound himself that no proceedings could be had upon his original and principal cause of action, notwithstanding the refusal of Venezuela to pay Idler in the action of the courts

in vacating Idler's judgment? We think not. The utmost effect that can be attributed to Chataing's agreement to wait is that he was to allow Idler a reasonable time for the collection of the money which the government owed him.

Whether the Statue of Limitations commenced to run in the lifetime of Chataing we need not decide. We are entirely satisfied, however, that the presumption of payment which arises after the lapse of twenty years applies here. That presumption is applicable to every specie of security for the payment of money, whether bond, mortgage, judgment, or recognizance—to debts of all description not barred by the Statute of Limitations, and until the presumption is rebutted the instrument does not furnish even *prima facie* evidence of indebtedness. Vanloon *vs.* Smith, 103 Pa., 238; Lash *vs.* Von-Neida, 109 Pa., 207; Biddle *vs.* Bank, 109 Pa., 349.

Now it is satisfactorily shown that by the law of Venezuela at all times the heir, whether under a will or *ab entestato*, is considered to be the same person as the deceased, and succeeds the deceased directly in all his rights and titles in and to the property, whether real or personal, which forms the estates from the very moment of the death, and is invested with the right to demand, sue for, collect, and recover all claims and debts due the deceased. This so appears from the affidavit, "taken by agreement with the same effect as a deposition under a rule of court," of Jose Ignacio Rodriguez, a doctor of civil law, etc. This affidavit, while taken after the trial before the jury, was for use before the court upon the hearing of the rule for judgment upon the questions of law reserved, and is therefore to be treated as part of the record, at least so far as concerns the reserved question of law, and the reservation of the defendants' twelfth point covers the question now under discussion.

The law of Venezuela, then, being as stated, it follows that the heirs of Alexander Chataing had the right to demand and receive payment of the debt of 4400 pesos mentioned in the paper of January 9th, 1833, if any part of it remained unpaid. Therefore the presumption of payment is operative here, although no administrator had been appointed in the

State of Pennsylvania. Administration was indeed necessary in order to maintain a suit in the State, but not at all for the purpose of the receipt and acquittance of this debt, and the presumption of payment applies and should be enforced.

Foulk *vs.* Brown, 2 Watts, 209, 215, 217. There a suit was brought in the year 1829 by Lewis Foulk, administrator of Isabella Foulk his wife, against the executor of William Brown, deceased, to recover a legacy bequeathed to Isabella. The testator died in 1802, and Isabella Foulk in 1804. The presumption of payment arising from the lapse of twenty years was set up against the plaintiff. To meet this defense he set up the want of administration, but without avail. The court said: "Now, although it is time that in order to sustain a suit for this legacy after his wife's death, the plaintiff would have been obliged to take out letters of administration, yet that was a ceremony at all times in his own power to resort to. He had but to ask and would have received them as a matter of course. His disability to sue was a voluntary one. How, then, can he set up his own laches and indolence in this respect, or how does it show that he was not paid?" The point of this decision was that as the plaintiff, as surviving husband, had acquired the right to the legacy, the presumption of payment arose even in the absence of administration. The principle applies here, and the following observations of the Supreme Court of Pennsylvania made in that case are very pertinent: "The rule of presumption when traced to its foundation is but a rule of convenience. No person ought to be permitted to lie by whilst transactions can be fairly investigated and justly determined until time has involved them in uncertainty and obscurity, and then ask for an inquiry. Justice cannot be satisfactorily done when parties and witnesses are dead, vouchers lost or thrown away, and a new generation has appeared on the stage of life unacquainted with the affairs of a past age, and often regardless of them."

We entertain no manner of doubt that at least as early as the decision of the Supreme Court of Justice of Venezuela affirming the vacation of Idler's judgment, that the heirs of

Alexander Chataing had the right to demand payment of the balance if any of the debts of 4400 pesos, but even upon the plaintiff's view the presumption of payment had closed against the debt before this was brought, for in the year 1871 the defendants received out of moneys paid by Venezuela on the Idler claim a sum in excess of the debt.

Upon the whole record we are of the opinion that the court below should have entered judgment for the defendants on the reserved points, and following the practice laid down in Insurance Co's. *vs.* Baykin, 12th Wall., 433, we will enter the judgment which that court ought to have rendered. The judgment of the Circuit Court is reversed, and it is ordered that judgment be entered in favor of the defendant below (the plaintiffs in error) upon the questions of law reserved *non obstante veredicto.*

Supreme Court, U. S.
FILED.
OCT 14 1895
JAMES H. McKENNEY,
CLERK.

582

No. ~~992~~. October Term, 1894. 5.

Supreme Court of the United States.

Charles L. Borgmeyer, Administrator of the Estate of Alexander Chataing, deceased, Plaintiff in Error,

vs.

William Idler and John W. Haseltine, Administrators *de bonis non* of the Estate of Jacob Idler, deceased.

IN ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

Brief for Defendants in Error on Motion to Dismiss or Affirm.

M. HAMPTON TODD,
EDWARD H. WEIL,
Counsel for Defendants in Error.

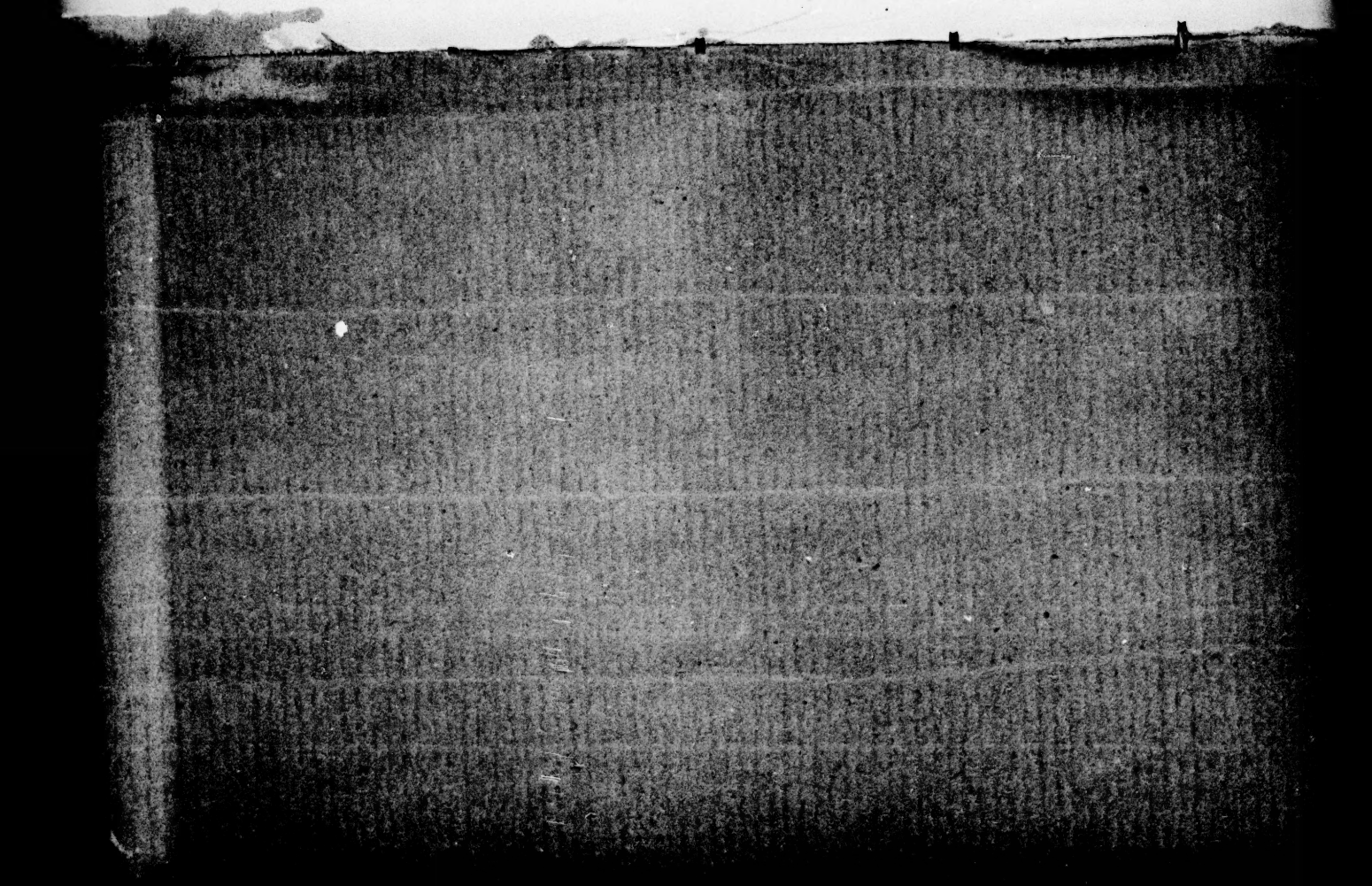
NOTICE OF MOTION.

SIRS:—You are hereby notified that the within motion, with the brief annexed thereto, will be presented to the Supreme Court of the United States on Monday, the fourteenth day of October, 1895, at the convening of the Court.

M. HAMPTON TODD,
EDWARD H. WEIL,
Counsel for Defendants in Error.

To Messrs. H. R. EDMUNDS and
PHILLIPS & MCKENNEY,
Counsel for Plaintiff in Error.

Allen, Lane & Scott, Prs, Phila.



SUPREME COURT OF THE UNITED STATES.

October Term, 1894. No. 972.

Charles L. Borgmeyer, Administrator of the Estate of Alexander Chataing, deceased, Plaintiff in Error,

vs.

William Idler and John W. Haseltine, Administrators de bonis non *of the Estate of Jacob Idler, deceased.*

MOTION TO DISMISS OR AFFIRM.

Now come counsel for defendants in error in the above-entitled cause, and move the court to dismiss the writ of error herein on the ground that the court had no jurisdiction of this case; or, to affirm the judgment of the Circuit Court of Appeals for the Third Circuit, upon the ground that although the record may show that this court has jurisdiction, yet it is manifest that the writ of error was frivolous and was taken for delay only.

(Signed) M. HAMPTON TODD,
EDWARD H. WEIL,
Counsel for Defendants in Error.

STATEMENT OF THE CASE.

Suit was brought in the Circuit Court of the United States for the Eastern District of Pennsylvania by Charles L. Borgmeyer, a citizen of the State of New Jersey, administrator of the estate of Alexander Chataing, deceased, against William Idler and John W. Haseltine, citizens of the State of Pennsylvania, administrators *de bonis non* of the estate of Jacob Idler, deceased. The jurisdiction of the Circuit Court was dependent entirely upon the averment and the fact that the plaintiff and defendants were citizens of different States. The statement or declaration of plaintiff was upon a claim based upon two instruments in writing, one dated September 25th, 1832, made in Caracas, Venezuela, in the Spanish language, by which Jacob Idler agreed for himself and his associates to pay to Alexander Chataing a commission of ten per cent. upon a certain judgment rendered in favor of the associates in the courts of Venezuela, when and in such manner that Venezuela should make payment upon the same; and by the second paper, dated January 9th, 1833, also made in Caracas, Idler admitted that he owed Chataing 4400 pesos (about $4000), and further promised to pay Chataing out of the first moneys that should be paid by Venezuela upon this judgment. (Trans. of record, page 4.) The defendants showed that Venezuela never paid the judgment and that her own courts had set it aside. Chataing died on August 30th, 1836. The claim of Idler and his associates, together with the claims of other citizens of the United States, were presented to and allowed by a mixed commission that sat in Caracas in 1868, under a treaty made between the United States and Venezuela in 1866. When the claim was prosecuted before this tribunal, Chataing had been in his grave thirty-two years, and none of his representatives took part in the prosecution of it, or were ever heard of. Subsequently, twenty-one years afterwards, the awards rendered by this commission were set aside by a treaty between our Government and Venezuela, and a new convention was entered into in 1889, providing for a new commission, which sat in Washington in 1890, where all of the claims of citizens

of the United States against Venezuela were presented *de novo*. An award was again made in favor of the Idler claim in the year 1890 by this second commission, fifty-four years after the death of Chataing. Upon the 15th of September, 1892, suit was brought by Borgmeyer, as administrator of Chataing, to recover this commission of ten per cent. on the paper of September 25th, 1832, and for the 4400 pesos. The claim for a commission was therefore sixty years old, less ten days, and for the alleged indebtedness of 4400 pesos was over fifty-nine years old. Chataing, at the time of the bringing of this suit, had been in his grave fifty-six years. Idler died on the 26th of May, 1856, and at the time of the bringing of the suit to attempt to hold his estate liable had been buried thirty-six years. Payments were made in 1871 and 1876, on account of the awards under the first commission, by the State Department, to Mr. Idler's administrators, who filed their accounts of these moneys, and distribution was made in and by the orders and direction of the Orphans' Court of Philadelphia, more than twenty-one years prior to the institution of the suit. No demand had been made upon the administrators of Idler or any claim made before that court at the three accountings, that any indebtedness to Chataing existed or was ever heard of. At the trial, the Circuit Court directed a verdict for the plaintiff, reserving all the questions of law, and subsequently entered judgment in favor of the plaintiff on the verdict. The defendants obtained a writ of error from the Circuit Court of Appeals, which reversed the judgment of the Circuit Court and entered judgment for the defendants, notwithstanding the verdict on the points of law reserved at the trial.

The Circuit Court of Appeals, Mr. Justice Shiras, and Judges Acheson and Dallas held:—

. The record disclosed the fact that the Idler judgment in Venezuela had been swept away by the courts of that country, and nothing had been paid by Venezuela on the footing of that judgment. (Trans., page 172.)

To use the language of the Court of Appeals (Trans., page 172): "To apply, then, the writing of

September 25th, 1832, to a state of affairs brought about more than half a century afterwards by the award of a mixed commission acting under an international treaty, would be a perversion of the paper, and would work the greatest injustice to the estate of Idler. The whole situation had radically changed without his fault. His judgment had utterly failed him. The allowance of the claim was ultimately secured by the action of an independent tribunal proceeding upon original grounds. The favorable result was due to the personal exertions of Idler and his associates and the services, at a vast expense, of other agents and attorneys. All of this the evidence shows. To the result neither Chataing nor his personal representatives contributed aught."

The other defenses to this claim were the Statute of Limitations and the presumption of payment in analogy to the Statute of Limitations.

To the claim upon the other paper, for the 4400 pesos and interest, the Circuit Court of Appeals held that the proof of its actual payment by Idler in his lifetime was remarkably full, considering its antiquity, and that its non-assertion for over fifty years was inexplicable except upon the hypothesis of full satisfaction in Chataing's lifetime. (Trans., page 173.)

But independently of the proof of payment, the court held that the presumption of payment arose after the lapse of twenty years. The Court of Appeals then showed that even upon the plaintiff's own view, the moneys received in 1871, on the first award, were in excess of the debt, and the presumption of payment had closed against the debt before suit was brought. (Trans., page 175.)

ARGUMENT.

I.

Neither the constitutionality of any law of the United States nor the validity or construction of any treaty made under its authority was drawn in question, and the decision of the Circuit Court of Appeals is final under the sixth section of the Act of March 3d, 1891.

The language of the fifth section of the Act of March 3d, 1891, 26 Stat. L., 826, allowing appeals or writs of error from the District and Circuit Courts to the Supreme Court, is, among other cases: "In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority is drawn in question."

The twenty-fifth section of the Judiciary Act of 1789, 1 Stat. L., 85, giving jurisdiction, is as follows: "Or where is drawn in question the validity of a treaty or statute of, * * * or where is drawn in question the construction of any clause of the Constitution, or of a treaty, or statute of, or commission held under the United States."

Having shown from the brief statement of the case that the jurisdiction was derived solely by reason of diverse citizenship, it is respectfully submitted that the validity or construction of any treaty made under the authority of the United States was not drawn into question, and was not decided either by the Circuit Court or the Circuit Court of

Appeals. It was part of the history of the case that moneys had been received upon two awards made by two international tribunals appointed under the provisions of two treaties. Neither party raised a doubt as to the validity of these treaties. The construction of these treaties was neither raised nor considered. The decision of the Commissioners could not be inquired into by the court, whether their awards were right or wrong, for their decision was final. The awards were in favor of Idler and his associates, and they surely could not complain that the decision in their favor was wrong. The plaintiff alleged, as the very foundation of his suit, that Idler had received moneys under these awards, and therefore and solely for this reason, the defendants were under an obligation to pay. Where and how the moneys were obtained were facts in the case upon which hinged the construction of certain papers executed by the parties. The decision of the Court of Appeals would have been precisely the same if the moneys had been paid under an award of any other tribunal, foreign, federal, or state, or award of arbitrators between the parties. That moneys were received and the source from which they came were facts, pertinent to the issue. The validity of the treaties that created the tribunal was not discussed, nor was any construction of any of the provisions of the treaties maintained on the one side and denied on the other. What were construed were the papers upon which the claims were founded. The identical question was raised in the clause of the Judiciary Act, similar to the Act of 1891, where the expression is, drawing in question the construction of any clause of the Constitution or of a treaty or statute of or commission held under the United States: Gill *vs.* Oliver, 11 Howard, 545; Williams, trustee, *vs.* Oliver, 12 Howard, 111. In these cases, awards had been obtained under a treaty with Mexico. Both parties to the contests claimed under the awards of the commission appointed under that treaty; and this court held that the introduction of the treaty and its award as part of history to determine the rights of the litigants, did not, in any way, involve the validity of the treaty or its construction.

We quote from the opinion of Mr. Justice Grier, in the first case, 11 Howard, as the strongest and clearest presentation of the question we can give (page 545) :—

"We have sought in vain through the record of this case to find any question raised directly by the pleadings, or 'by clear and necessary intendment therefrom,' touching the validity of any treaty, statute, or authority exercised under the United States.

"Both parties claim certain moneys in court as assignees of Lyde Goodwin, who was a member of the 'Baltimore Mexican Company,' and entitled to a certain proportion of the money awarded to said company as a just claim on the Mexican Government. The validity of the award, or the treaty under which it was made, is not called in question by either party, as both claim under them. In order to ascertain the effect of certain previous assignments made by Lyde Goodwin, the history of the origin of his claim necessarily makes a part of the case.

"The treaty and award are introduced as a part of this history, as facts not disputed by either party. The money being in court, both the treaty and the award were *functi officio*, and no decision of the rights of the claimants *inter se* can, in the nature of the case, involve the validity of either." * * *

Pages 546–7 :—

"We are equally at a loss to discover in this record where or how 'the construction of any clause of the Constitution, or of a treaty or statute of, or commission held under, the United States,' is drawn in question in this case.

"As we have already said, both parties claim money in court, and in order to test the value of their respective assignments from Lyde Goodwin, introduce the history of the claim from its origin.

"The treaty and award are facts in that history. They were before the court but as facts, and not for construction. If A. hold land under a patent from the United States or a Spanish grant ratified by treaty, and his heirs, devisees, or assignees dispute as to which has the best title under him, this does not make a case for the jurisdiction of this court under the twenty-fifth section of the Judiciary Act. If neither the validity nor construction of the patent or title under the treaty is contested, if both parties claim under it, and the contest arises from some question without or *dehors* the patent or the treaty, it is plainly no case for our interference under this section.

"That the title originated in such a patent or treaty is a fact in the history of the case incidental to it, but the essential controversy between the parties is without and beyond it. So in this case, both claim the money in court. It is a fact that the money has been paid by the Republic of Mexico on a claim which has been pronounced just and equitable by commissioners under the convention of 1839." * * *

Page 548:—

"Whether this money paid into court under the award, and first acknowledged by Mexico as a debt in 1825, existed as a debt transferable by the Maryland insolvent laws in 1817, or whether it for the first time

assumed the nature of a chose in action transferable by assignment after 1825, when acknowledged of record by Mexico, and passed by the assignment of Lyde Goodwin to Robert Oliver, was a question wholly *dehors* the treaty and award, and involving the construction of the laws of Maryland only, and not of any treaty or statute or commission under the United States."

This question was again before this court, reported as Williams, Trustee, *vs.* Oliver, in 12 Howard, 111, arising out of moneys paid under this Mexican treaty. Mr. Justice Daniel delivered the opinion, and begins as follows: "This case is not distinguishable from the case decided at the last term of Gill *vs.* Oliver's Executors, and which was dismissed for want of jurisdiction." The opinion then reviews this latter case, adopts the views expressed in the opinion of Mr. Justice Grier, and ends as follows: "For the reason, therefore, that this case falls directly within the decision of Gill *vs.* Oliver's Executors, 11 How., 529, and is not distinguishable from it, the case must take the same direction, and be dismissed for want of jurisdiction."

These decisions were cited and approved, and the principle applied in the case of the Baltimore & Potomac R. R. Co. *vs.* Hopkins, 130 U. S., 225, and where other decisions of this court are referred to upon this question. "There was no dispute about the Federal right itself, but about the consequences of what had been done by the parties in respect to it," was said by this court in the case of Adams Co. *vs.* Burlington R. R. Co., 112 U. S., 123, and upon this ground the writ was dismissed for want of jurisdiction.

II.

Even if the validity of a treaty, or its construction, had been presented for consideration, which we respectfully submit was not the case, still if there were independent grounds to base

the judgment of the court, the Supreme Court will not take jurisdiction, even though it might think the position of the lower court an unreasonable one.

The authorities on this point are numerous, among which are: Klingler *vs.* Missouri, 13 Wall., 257; Brown *vs.* Atwell, 92 U. S., 327; Citizens' Bank *vs.* Board of Liquidation, 98 U. S., 140; Choteau *vs.* Gibson, 111 U. S., 200; Adams County *vs.* B. & M. R. R. Co., 112 U. S., 123; Detroit City Ry. Co. *vs.* Guthard, 114 U. S., 133; New Orleans Water Works *vs.* Louisiana Sugar Refining Co., 125 U. S., 18; De Saussure *vs.* Gaillard, 127 U. S., 234.

In the case of Johnson *vs.* Risk, 137 U. S., 300, where there were two grounds of defense, each broad enough to defeat recovery, it was held that the defense of the Statute of Limitations, unless so palpably unfounded that the Supreme Court must presume that the lower court overruled it, will dismiss a writ of error, although the record showed that one of the grounds of defense involved the construction of the United States Bankrupt Act of 1867.

III.

The decision of the Circuit Court of Appeals is final in all cases where the jurisdiction is dependent upon the opposite parties to the suit being citizens of the different States, and a writ of error will not lie from the Supreme Court to review its judgments or decrees: Lau Ow Bew vs. *the U. S., 144 U. S., 47.*

This decision in Lau Ow Bew's case, was cited and approved in the case of the Northern Pacific R. R. Co. *vs.* Amato, 144 U. S., 465. In the latter case, it was shown by the opinion of Mr. Justice Blatchford, that the jurisdiction of the Circuit Court depended upon the fact that the defendant was a corporation created by an Act of Congress, and that the suit arose under a law of Congress without reference to the citizenship of the plaintiff. His citizenship was not mentioned in the complaint or in the

petition for removal, and the petition states that the action arose under an Act of Congress; "nor," says the learned judge, "was the decision of the Circuit Court of Appeals in effect made final, as in Lau Ow Bew, 144 U. S., 47." Having shown that this court had jurisdiction by writ of error, but that there was little merit in the case, the opinion continues, "we are of opinion that under clause 5 of rule 6 of this court the judgment of the Circuit Court of Appeals must be affirmed, on the ground that there was color for the motion to dismiss, and that the writ was for delay only."

IV.

The allowance of a certiorari *to the Circuit Court of Appeals, in which its decisions are final, should be exercised sparingly and with great caution; questions of gravity and importance solely should be certified for instructions by that court, and only when such questions are involved should the power of the Supreme Court be invoked to bring up a case where the decision of the Court of Appeals is final:* Ex parte *Lau Ow Bew, 141 U. S., 583.*

The Circuit Court of Appeals was created for the very purpose of relieving this court of burdens, and relieving delayed suitors in the pursuit of justice, and the interposition of this court is to be invoked only for matters of gravity and general importance: *In re* Woods, 143 U. S., 202, Lau Ow Bew *vs.* U. S., 144, U. S., 47.

V.

Conceding, for the sake of argument merely, that a writ of error would lie, the judgment should be affirmed, upon the ground that there is color for the motion and that the writ was taken for delay only.

Two claims were made against the estate of a decedent, after two generations nearly had passed away, one destitute of any foundation in law or equity and barred, even if meritorious, by

statutes of repose made for the living as well as for the dead; the other, shown by the Court of Appeals to have been actually paid more than fifty years before the suit, upon evidence regarded by the court as remarkably full, and presumed by law to have been paid, after so long a lapse of time and of non-presentation for more than half a century. These pregnant facts, it is respectfully submitted, are considerations which need no argument to be added to the prayer of the petition to affirm the unanimous judgment of the Circuit Court of Appeals, upon the ground that there is color from the motion and that the writ was taken for delay only.

It will be perceived that the Circuit Court of Appeals did not discuss, in any manner, the validity of any treaty or the construction of any treaty, but referred to the treaties and awards as facts in the case. (Trans., pages 165–175.)

M. HAMPTON TODD,
EDWARD H. WEIL,
For the Defendants in Error.

FILED.
APR 29 1895
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. [redacted] 582

CHARLES L. BORGMEYER, ADMINISTRATOR, ETC., PLAINTIFF IN ERROR,

vs.

IDLER, ETC., ADMINISTRATORS, ETC.

Brief for Borgmeyer upon the Motion by Idler, etc., to Dismiss or Affirm.

1. As a preliminary objection to the motion, we submit that the defendants in error should have caused to be printed "*so much of the record as would enable the court to act understandingly without referring to the transcript.*" (Walston *vs.* Nevin, 128 U. S., 578, 579.)

They have printed no part of it, unless the *opinion* of the learned court below be such. That opinion, although required by rule (8, paragraph 2) to be transmitted "*with* the record," is, nevertheless, no part of it; at all events, no part of it for the purposes of such a motion, which requires

the court to look into the earliest proceedings by the parties in the circuit court as taken by themselves and not as these may have appeared to the circuit court of appeals.

2. The opinion below shows plainly that the contest was mainly upon the question whether certain treaties betwixt the United States and Venezuela *authorized* and, farther, whether mixed commissions sitting thereunder *made* decisions enforcing *a certain judgment* in a Venezuelan court, the satisfaction of which was a condition precedent to the payment of the money in suit.

The learned circuit court had held the affirmative and given judgment accordingly. Upon appeal this was reversed.

In Gill's case, 11 How., 545 (and see 12 How., 111), so much quoted and relied upon in the brief on behalf of the motion to dismiss, no question was made as to the validity or meaning of the treaty there in question or as to the manner in which it had been executed by the commission, and even then the decision was made by only a bare majority of the court. That majority, having been thus duly ascertained, was afterwards bowed to in a second case upon precisely the same circumstances, without further dissent. However, the decision is not questioned here.

Our whole *case* turns upon a question whether *one particular claim* was recovered by Idler under the treaties with Venezuela. The plaintiff below asserted that it had been and the defendant denied it. If it had not been, the lapse of time, etc., etc., defeated the action.

If in Gill's case the question had been whether the money received from Mexico had been paid upon the *illegal* contract for arms or upon some other contract and the effect of

the treaty of 1825 had thereupon come in question, the case would be more like the present one, for if under that treaty the money had not been paid upon the contract *for arms* the Maryland assignee in insolvency in 1817 might have been entitled to it in accordance with the decision in Comegys *vs.* Vasse, 1 Peters, 193.

3. Understanding that the state of the record (in the ordinary sense of that term) has not been brought before the Court in a manner which justifies us in discussing it farther—even if what has already been submitted upon its merits be not superfluous—we will only add, *ex abundanti*, that the suggestion as to "*frivolousness*" and "*delay*" in connexion with this writ of error can hardly be serious, inasmuch as the learned and able circuit court below, after taking time to consider the same record, gave judgment thereupon for the plaintiff in a large sum of money.

4. Nor do we consider ourselves warranted in presenting the full reply which the transcript contains to the persistent imputations in the brief of an *inexplicable delay* in bringing this suit (the promises to pay therein involved being upon condition precedent *only recently performed*). It is supposed that in any case such suggestions are out of place upon a motion to dismiss for any reasons here competent.

S. F. PHILLIPS,
F. D. MCKENNEY,
For Borgmeyer.

OCT 11 1895
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, A. D. 1895.

No. ~~275~~ 582

C. L. BORGMEYER, ADMINISTRATOR, PLAINTIFF IN ERROR,

vs.

WILLIAM IDLER, ETC., ADMINISTRATORS, ETC., DEFENDANTS.

BRIEF FOR THE PLAINTIFF IN ERROR UPON THE MOTION TO DISMISS OR AFFIRM.

S. F. PHILLIPS,
F. D. McKENNEY,
For Borgmeyer.

HENRY R. EDMUNDS,
Of Counsel.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1895.

No. 972.

C. L. BORGMEYER, ADMINISTRATOR, PLAINTIFF IN ERROR,

vs.

WILLIAM IDLER, ETC., ADMINISTRATORS, ETC., DEFENDANTS.

BRIEF FOR THE PLAINTIFF IN ERROR UPON THE MOTION TO DISMISS OR AFFIRM.

This writ of error is upon a judgment of the circuit court of appeals for the fourth circuit, which reversed a judgment of the circuit court for E. Pennsylvania.

The action was in assumpsit, brought September 15, 1892, by the plaintiff in error, a citizen of New Jersey, against the defendants, citizens of Pennsylvania. In the circuit court judgment was rendered for $20,235.97 (Rec., p. 35). In the court of appeals this was reversed (p. 176).

The cause of action was a refusal to pay a debt *evidenced* by two notes executed by the intestate of the defendants at Caracas in the years 1832 and 1833,—*payable out of such money, if any, as should thereafter be received by the promisor under a judgment against Venezuela, for $70,521.11, which had been recovered by him in the courts of that country in September,* 1832: *the declaration alleging that large amounts of this judgment had been received from Venezuela under awards by joint mixed commissions, authorized by the United States and Venezuela in the years 1868 and 1890.*

Whether this allegation was true was a principal point in the case, and was held to be unfounded by the circuit court of appeals.

The maker of the notes was Jacob Idler, the intestate of the defendant, a citizen of Pennsylvania, who, in the years 1817, etc., had supplied arms, &c., to Venezuela, a balance upon which dealing remaining unpaid and disputed, he had gone to Caracas in 1827 and become involved in litigation with that government (which is suable in its own courts), and this, after some years, resulted in the judgment already mentioned. The original payee was Alexander Chataing, the intestate of the plaintiff, a Venezuelan merchant, etc., then residing in Caracas, who had previously aided Idler with money and services in his litigation.

One of the notes in suit, dated January 9, 1833, contained a promise to repay to Chataing 4,400 pesos, with which in 1831 and 1832, as the note set forth, Idler had been furnished by Chataing "*for expenses of his subsistence and costs of*

the prolix and expensive suit pursued against the government of Venezuela in compensation for supplies," etc., and which accordingly the former promised to satisfy *"from the first funds that may be paid him by the government, his debtor."* The other note, dated *September 25, 1832*, bound Idler (folio 10) to pay to Chataing *"a commission of ten per cent. upon the amount of the payment that I may be claiming from the government of Venezuela on account of supplies,"* etc., *"as soon as the payment or satisfaction is realized,"* * * * *"in virtue of a judgment,* etc., *issued on the 18th of the current month."*

The declaration proceeds in this connection as follows (folio 7): *"After very great and unlooked-for delays upon the part of Venezuela in satisfying the said judyment, it was made the basis of awards against the Republic in favor of the said Jacob Idler and the defendants by certain mixed commissions authorized thereto by the United States and that Republic in the years 1868 and 1890, and under said awards since September 3, 1890, and up to the present date Venezuela has paid,* &c., *$93,986.65."*

The pleas (folio 14) were *"non-assumpsit, payment, set-off, and the bar of the statute of limitation,"* with notice that upon the trial the defendants "would *give in evidence* certain matters set forth in an affidavit," &c.

That affidavit (after stating that Jacob Idler had died in 1856), so far as now material, is as follows: *"A treaty was concluded between the United States and Venezuela under which a mixed commission was appointed to determine the validity of*

*claims against Venezuela. This claim of Idler and his associates was presented to the mixed commission that sat at Caracas in 1868 under that treaty. Its validity was denied by Venezuela, its commissioner voted against its validity, and it was allowed by the vote of the umpire." * * * "By the treaty of June 4, 1889, between the United States and Venezuela all of the awards in favor of the citizens of the United States against Venezuela made by the Caracas commission were reopened. A mixed commission or court in 1890, appointed under that treaty, heard and determined in the city of Washington the validity of this claim of Idler and his associates de novo, and under the provisions of the treaty it became the duty of the commission or court to examine and ascertain whether any parties, with due regard to the principles of justice and equity, had any vested rights or interests, and to fix the amount of their interests and to award certificates to such parties, and it was further provided by the treaty that the payment of the awards and instalments should be made to the United States. No claim was made before the said commission or court for or on account of any interest in this award by Alexander Chataing or his estate. * * * The decision of the court in favor of the validity of the claim was made by a majority of its numbers, the Venezuelan commissioner dissenting."*

Upon the trial, under instructions (the learned judge at the same time *reserving* certain points of law, p. 15), the jury rendered a verdict for the plaintiff for, as corrected (folio 36), $20,239.97, and, after consideration of the points reserved, the court awarded judgment accordingly.

This judgment, as already said, was reversed by the circuit court of appeals for certain alleged errors assigned by the defendants.

In brief outline, therefore, this suit is for money the payment of which was by the contracts expressly postponed until the debtor should have received from Venezuela other money due upon a judgment, certain services and a loan in aid of which having constituted the consideration for such contracts, and no money upon such judgment having been received by such "debtor" until about 38 years after the contracts had been made, and then only by virtue of treaties betwixt Venezuela and the United States.

It is submitted that upon the face of the declaration (see Turck's case, 150 U. S., 138) the title of the plaintiff to sue turns upon the question whether upon due construction of certain treaties these had authorized and been executed by awards in satisfaction of Idler's Venezuelan judgment of 1832, and that thereupon various pleas, motions, and assignments of error by the defendant, and as well numerous passages in the opinions of both courts, show beyond doubt that the contention below actually, as well as technically, corresponded with that *challenge* in the declaration.

For instance:

1. See seven different requests, numbered *fourth* to *twelfth*, made by the defendants (p. 15), dealt with by the learned circuit court (pp. 20 to 24), afterwards made subject-matter for assignments of error (pp. 53, etc.), and at last expressly approved of in the judgment of the learned court of appeals (p. 175, *bottom*).

2. Evidence introduced by both parties (p. 37).

3. And, amongst others to the same effect, the following passages in the opinion of the learned circuit court of appeals, being a part of an elaborate discussion therein of the treaties and of the action of the mixed commissions under these:

"As is to be seen from its affirmance of the defendant's fifth point, the circuit court rightly considered that the payment to Alexander Chataing of the stipulated commission was contingent upon Jacob Idler's recovering satisfaction of the judgment he had obtained on September 18, 1832, against the government of Venezuela. * * * Was satisfaction of the judgment, within the fair meaning of the paper of September 25, 1832, ever realized? The circuit court was of the opinion that substantially the money was collected on the judgment, the court saying, "The money collected must be regarded as realized on the judgment—the fruits of its execution by the Government of the United States." In this view we are not able to concur. The United States never undertook to enforce the payment of the judgment. From the first to the last its action in this matter was strictly diplomatic and peaceful. It merely exercised in a friendly manner its good offices on behalf of Idler and his coclaimaints. Had it gone beyond this, it would have violated its settled policy with respect to claims of its citizens founded on their contracts with foreign governments (Wharton's Inter. Law Dig., section 231). Moreover, the judgment of September 18, 1832, was absolutely annulled. The decision of the supreme court of justice of Venezuela is conclusive upon that point. * * * Could Alexander Chataing, a citizen of Venezuela, or those claiming under him, challenge anywhere the binding force of the judgment thus pronounced by the highest court of his own country? Surely the courts of this country are to respect that judgment. (Elmendorf *vs.* Taylor, 10 Wheat., 152, 159; Smith *vs.* Condry, 1 How., 28. * * *)

"*We do not consider it a matter of any moment that in pressing their claim before the mixed commission Idler's administrators relied upon the Venezuelan judgment of* 1832. *That judgment was a part of the complicated transactions*

*between their intestate and the government of Venezuela. It perhaps afforded some evidence of the correct amount of the indebtedness in dispute. Nor is it important how the majority of the commissioners may have regarded that judgment. Neither its correctness nor its existence was recognized by either of the treaties. * * * That they awarded the face amount of the judgment with interest is of no consequence. The reasons for their award are immaterial here. * * * Construing the paper of September 25, 1832, with reference to its terms, its subject-matter, and the situation of the parties, we conclude that no payment or satisfaction of the judgment therein recited was ever made or realized within the true intent of the parties, and that the stipulated commission to Chataing never became payable. It follows, therefore, that the reserved questions of law appertaining to this branch of the case should have been decided in favor of the defendants"* (p. 172).

In the above passage, therefore, the learned court of appeals, in order to avoid the effect of an award under the treaty, hold that, no matter whether in stating his case before the mixed commission which gave that award Jacob Idler had actually made claim before the mixed commission *upon a certain judgment*, and no matter also whether the commission had based their award upon that judgment, it might, nevertheless, be determined in a collateral proceeding thereupon that they had not, and that they were mistaken in saying that they had; adding that the "reasons"—which word means of course in that connection *foundation*—for their award, as stated by themselves, are of no importance toward identifying the particular cause of action upon which this was given. That court also hold that the commission did not and *could not* have given an award upon the judgment of 1832 *to operate in invitum* against Venezuela, and refer therefor to passages in *Wharton's Digest* which upon their face refer to the position as to debts due by foreign governments to American citizens taken by the State Department *in general—i. e.*, in the absence of any specific treaty providing (as had been done here) for a *commission, awards*, and *execution;* and again, quoting authori-

ties to the effect that the courts of one nation are ordinarily bound by judgments rendered by those of another, the court below apply these to *international courts*, whereas the latter, and *for obvious reasons*, are not bound by judgments in favor of the debtor sovereign rendered in its own courts—*ex. gr.*, by the *restitutio in integrum* in the present case.

We call attention to these points not by way of suggesting that they are erroneous, except so far as we may be called upon to do this upon the present motion *To affirm* the judgment below. Upon the motion *To dismiss*, as we have said, there is no place for such allegation, but in that connection attention is called to the same passage as evidence of the extent to which, in its practical and of course unquestionable execution by the special tribunal set up therefor, the treaty of 1889 has been construed by the learned court of appeals. When we say *unquestionable* we mean unquestionable by Idler and his representatives, who after claiming and receiving an award upon a certain ground of fact cannot thereafter deny this in order to defeat any consequence resulting therefrom.

ARGUMENT.

The provisions of the appellate court act of March 3, 1891, relied upon for the present writ of error, are as follows:

"SECTION 5. That appeals or writs of error may be taken from the district courts, or from the existing circuit courts, direct to the Supreme Court, in the following cases:

* * * * * * *

"In any case in which the constitutionality of any law of the United States, *or the validity or construction of any treaty made under its authority*, is drawn in question.

* * * * * * *

"SECTION 6. That the circuit courts of appeals established by this act shall exercise appellate jurisdiction to review by appeal or by writ of error final decisions in the district courts and the existing circuit courts in all cases other than those provided for in the preceding section of this act unless otherwise provided by law, and the judgments or decrees of the circuit courts of appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States, or citizens of different States; * * *

"In all cases not hereinbefore in this section made final there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States where the matter in controversy shall exceed $1,000.00 besides costs. * * * (26 Stats., pp. 827, 828.")

(1.) Whether the courts below *actually* construed the treaty referred to in the declaration, and also whether *contradictory constructions thereof* by them led to contrary decisions as to the right of action of the plaintiff,—is submitted upon the extracts given above from the opinion of the learned circuit court of appeals, together with the context thereto presented in immediate connection with them.

Gill vs. Oliver, 11 How., 529, so much relied upon and freely quoted from in the brief for Idler, is therefore not in point here.

So much of that quotation as concerns the question of treaty *validity* supposed to have been raised in Gill's case is specially not in point, because that question is not raised here.

However, for another reason, covering both points in that quotation, that case is not relevant, viz., because it came up upon a writ of error to a State court, the record in which contained no evidence of any *actual* contention or decision upon the *construction* [or validity] of the treaty mentioned therein, so that the only matter of inquiry in this Court was whether the record showed that the judgment below must *necessarily* have involved such *construction* [or validity].

Upon that inquiry so limited the decision in this Court, by a vote of 5 to 4, was that no such implication arose.

Gill's case was followed, as to the same fund, *for conformity*, in several cases which came before this court within a few years afterwards (11 How., 529; 12 How., 111; *ib.*, 125; 14 How., 610; 17 How., 232; *ib.*, 258). Otherwise it has never been cited as authority to the effect that *substantially the same details* in another case would warrant like judgment. It seems to have been cited in this Court (except for conformity) in only two cases, and in these for matters not involved in the point upon which the members of the court had differed—that is, it has been cited in Millingar *vs.* Hartupee, 6 Wall., 258–262, as an illustration of the rule in this Court not to consider the question as to the *existence* of a Federal authority when closely connected with

one as to its *validity*, until the hearing; and in Railroad *vs.* Hopkins, 130 U. S., 210–225 (which involved only the existence below of a question of *validity*), after citing and quoting from Millingar's case, this Court, in the same connection, referred to Gill's case and three others previously cited in Millingar's. In Gill's case there was no suggestion by the parties that the treaty was *invalid*,—any speculation upon its invalidity being also absolutely precluded by the circumstance that both parties were claiming under it. But upon a question as to the necessary existence of some difference as to *construction* in a case betwixt parties both of whom claim under the paper said to have needed such construction, the presumption would be otherwise, viz., that a question upon construction might reasonably be looked for.

But the present case is one which does not require the Court to scrutinize the record in order to discover whether, *necessarily*, it involves a contention and decision below as to construction of the treaty in question. It is full of such matters expressly alleged and maintained by both parties and afterwards passed upon successively, in the judgments of both courts.

If this had been otherwise, we might very carefully have inquired, in the light of Mr. Justice Grier's opinion in Gill's case, and of the subsequent opinions explanatory thereof by Mr. Justice Nelson (12 How., 118; 17 How., 232; *ib.*, 239), together with the dissenting opinion of Mr. Justice Woodbury in the original case (11 How., p. 549) and

the animated criticism of that case by Chief Justice Taney four years afterwards (17 How., 258), whether it does not appear that whatever may have been the precise detail of fact upon the very point in Gill's case upon which the members of the court had differed, yet inasmuch as that was a writ of error *to a State court*, whilst the present one is *to a court of the United States*, the position taken there and in that class of writs of error in general, to the effect that *questions upon the title of a party to call for the construction of a treaty* are for purposes of *jurisdiction* not included amongst *questions upon such construction*, does not apply to writs of error under section 5 here under consideration. That nicety of distribution of questions arising upon records from State courts, as we should have submitted, comes of natural jealousy betwixt contiguous *political* jurisdictions: and ~~that~~ otherwise it might have been thought, inasmuch as no one can effectually raise before any court questions as to construction or validity of treaties, etc., without showing some *business interest* therein, pecuniary or other (courts of justice not being *moot* courts), that therefore every incidental question as to the title of a plaintiff in such connection takes color from the main question, and becomes itself a minor question upon *construction*, etc. (See Murdoch *vs.* Memphis, 20 Wall., 590, 632.)

However, believing it to be unnecessary to press this point here, we leave it, with the additional observation that it seems to be in line with the principle of the ruling in Hornor's case, 143 U. S., 577 (see also Janin's case, 155 U. S., 109, 113), that where a question of treaty construction, etc., exists in a record brought up under section 5 of the act of

1891 (*above*) this Court will pass upon *all* other questions therein; especially when that ruling is contrasted with the discussion in Murdoch *vs.* Memphis at pp. 627, etc., where the contrary rule in writs of error upon judgments in State courts is said to be due to "a policy vital in its essential nature *to the independence of State courts.*"

Adverting to other points in the brief for Idler, we submit that—

Paragraph "II" of that brief cites a number of cases which came up *from State courts* as authority for a rule which Hornor's case and Jaain's case, as just seen, hold to be inapplicable to cases from circuit courts of appeals.

Paragraph "III" merely repeats a contention upon which we have already submitted all that we desire to say.

Paragraph "IV" appears to us to be without foundation upon any matter of fact in the record.

Paragraph "V" seems to be inadvertent to the circumstance shown by the record, that upon the case suggested in that paragraph as being unworthy of further consideration,—the learned circuit court below, after a careful deliberation which had begun with some inclination otherwise, gave judgment for the plaintiff for more than $20,000.

And apart from that respect to the learned circuit court which, as we suppose, would prevent a suggestion that there is *nothing* in a contention upon which he had passed favorably, the case is, upon the record, one as serious as it is respectable in regard both to facts and law.

The record shows an appeal to the law and justice of the United States upon behalf (virtually) of the family of a Venezuelan gentleman (*Chataing*), who more than sixty years ago contributed liberally both money and services in order to secure for a citizen of the United States (*Idler*), then sojourning at Caracas, justice from the courts of his own country. After these had been given, their merit and success were warmly acknowledged by Idler, and the parties remained correspondents and friends until the death of Chataing in 1836, Idler surviving him until 1856. Upon making settlement, in the fall of 1832 and January, 1833, for the loan and services, it was agreed that Idler, then about to return to Philadelphia, should give writings in acknowledgment of his debt. It was also agreed thereby that payment not only of the commissions for services during the litigation, but also of the money lent (some $4,000) should be postponed until Venezuela should pay the judgment (about $70,000) in which that litigation had ended.

No doubt both parties supposed that this might be paid within a reasonable time. However, nothing was paid thereupon for some thirty-eight years thereafter, and while substantial amounts have been paid by Venezuela during the twenty years or so previous to the bringing of this suit, the whole amount has not yet been paid.

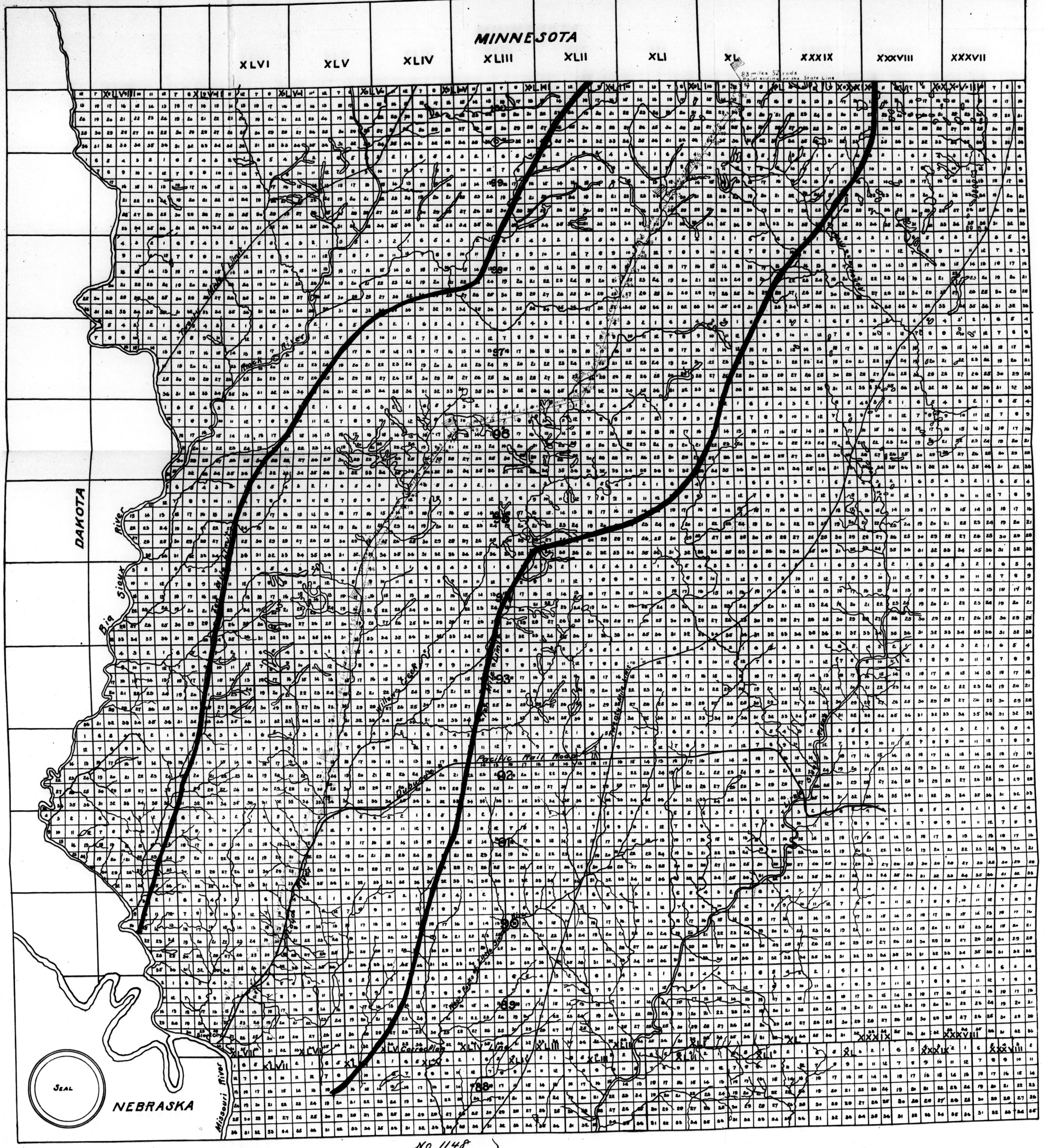
In 1892 the Chataing family, none of whom have ever been in this country, applied by attorney to the Secretary of State for satisfaction of their ancestor's claim out of the moneys then and thereafter paid by Venezuela under the award. After hearing argument for both sides the Secretary ordered that a sufficient amount of the money due to Idler should be retained in that department until the determination of a suit to be at once brought in the interest of the claimants. Thereupon an administrator for Chataing was duly appointed and this suit brought, to the end of warranting thereby another application to the Secretary for satisfaction out of the funds so as above detained.

In any view, therefore, of Chataing's dealings, why are not the general merits of this case beyond all censure? His conduct at its origination and formulation was that of a friend, and both honorable and generous. Nor has anything greedy or harsh appeared in its prosecution by his family. We therefore submit that, so far as such behavior can have weight for such a matter, these Venezuelan citizens are well entitled, the record otherwise permitting, to learn what, in the judgment of the highest court of this land, are the grounds if any upon which their case cannot be successful.

S. F. PHILLIPS,
F. D. MCKENNEY,
For Borgmeyer.

HENRY R. EDMUNDS,
Of Counsel.

Exhibit 6.



No. 1148
S.C. & N. P. R.R. Co. } D 35
vs.
United States.